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No. 51] NEW DELHI, DECEMBER 11—DECEMBER 17, 2016, SATURDAY/AGRAHAYANA 20—AGRAHAYANA 26, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 16 नवम्बर, 2016

का.आ. 2388.— राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3 के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, नीचे दी गई सारणी के कालम (3) में विनिर्दिष्ट व्यक्ति को उक्त सारणी के कालम (2) में विनिर्दिष्ट व्यक्ति के स्थान पर कालम (1) में विनिर्दिष्ट इंडियन बैंक में तत्काल प्रभाव से और अगले आदेशों तक, निदेशक नामित करती है:-

क्रम सं.	बैंक का नाम	वर्तमान निदेशक का नाम	प्रस्तावित व्यक्ति का नाम
	(1)	(2)	(3)
1.	इंडियन बैंक	श्री बी. पी. विजेन्द्र, पीसीजीएम, निरीक्षण विभाग	श्री जे.के. दास, मुख्य महाप्रबंधक एवं क्षेत्रीय निदेशक, भारतीय रिज़र्व बैंक, पोस्ट बॉक्स नं. 1, आश्रम रोड, अहमदाबाद-380014।

[फा.सं.6/3/2011-बीओ-1]

ज्ञानोत्तम राय, अवर सचिव

MINISTRY OF FINANCE
(Department of Financial Services)
 New Delhi, the 16th November, 2016

S.O. 2388.—In exercise of the powers conferred by clause (c) of the sub-section (3) of Section 9 of The Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of The Nationalized Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominate the person specified in column (3) of the table below as Director of Indian Bank specified in column (1) thereof in place of the person specified in column (2) of said Table, with immediate effect and until further orders:-

Sl. No.	Name of the Bank	Name of the Existing Director	Name of the Persons proposed
	(1)	(2)	(3)
1.	Indian Bank	Shri B.P. Vijayendra, PCGM, Inspection Department	Shri J.K. Dash, CGM and Regional Director, Reserve Bank of India, P.B.No.1, Ashram Road, Ahmedabad-380 014.

[F.No. 6/3/2011-BO. I]

JNANATOSH ROY, Under Secy.

नई दिल्ली, 6 दिसम्बर, 2016

का.आ. 2389.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा 3 के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, नीचे दी गई सारणी के कालम (3) में विनिर्दिष्ट व्यक्ति को तत्काल प्रभाव से और अगले आदेशों तक, उक्त सारणी के कालम (2) में विनिर्दिष्ट व्यक्ति के स्थान पर कालम (1) में विनिर्दिष्ट इलाहाबाद बैंक के निदेशक के पद पर नामित करती है:-

क्रम सं.	बैंक का नाम	वर्तमान निदेशक का नाम	प्रस्तावित व्यक्ति का नाम
	1	2	3
1.	इलाहाबाद बैंक	श्री ए. उदगाता	श्री विवेक दीप, क्षेत्रीय निदेशक, कानपुर, भारतीय रिज़र्व बैंक, पोस्ट बॉक्स नं.82 एवं 142, महात्मा गांधी मार्ग, कानपुर-208001

[फा.सं. 6/3/2011-बीओ-I]

ज्ञानतोष राय, अवर सचिव

New Delhi, the 6th December, 2016

S.O. 2389.—In exercise of the powers conferred by clause (c) of the sub-section (3) of Section 9 of The Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 of The Nationalized Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby nominate the person specified in column (3) of the table below as Director of Allahabad Bank specified in column (1) thereof in place of the person specified in column (2) of said Table, with immediate effect and until further orders:-

Sl. No.	Name of the Bank	Name of the Existing Director	Name of the Persons proposed
	(1)	(2)	(3)
1.	Allahabad Bank	Shri A. Udgata	Shri Vivek Deep, Regional Director, Kanpur, Reserve Bank of India, P.B.No.82 and 142, Mahatama Gandhi Marg, Kanpur-208001.

[F.No. 6/3/2011-BO. I]

JNANATOSH ROY, Under Secy.

(व्यय विभाग)

नई दिल्ली, 9 दिसम्बर, 2016

का.आ. 2390.—केंद्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए नीचे की सारणी के स्तंभ (1) में उल्लिखित अधिकारी को, जो सरकार का एक राजपत्रित अधिकारी है, उक्त अधिनियम के प्रयोजन के लिए संपदा अधिकारी नियुक्त करती है, जो उक्त सारणी के स्तंभ (2) में तत्स्थानी प्रविष्टि में विनिर्दिष्ट सरकारी स्थानों की बाबत अधिकारिता की स्थानीय परिसीमाओं के भीतर उक्त अधिनियम द्वारा या उसके अधीन संपदा अधिकारी को प्रदत्त शक्तियों का प्रयोग और उस पर अधिरोपित कर्तव्यों का पालन करेगा।

सारणी

अधिकारी का नाम	सरकारी स्थानों के प्रवर्ग और अधिकारिता की स्थानीय परिसीमाएं
(1)	(2)
वरिष्ठ उप-महालेखाकार (प्रशासन) या उस दशा में जहां ऐसा कोई वरिष्ठ उप-महालेखाकार नियुक्त नहीं किया गया है, वहां वरिष्ठ उप-महालेखाकार (प्रशासन), प्रधान महालेखाकार कार्यालय (लेखापरीक्षा), झारखंड, रांची	प्रधान महालेखाकार (लेखापरीक्षा), झारखंड, रांची के प्रशासनिक नियंत्रण के अधीन सरकारी स्थान

[फा. सं. ए-11013/12/2016-स्था.प्रशा.]

हरि किशोर, अवर सचिव

(Department of Expenditure)

New Delhi, the 9th December, 2016

S.O. 2390.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the officer mentioned in column (1) of the table below, being a gazetted officer of the Government to be the estate officer for the purpose of the said Act, who shall exercise the powers conferred, and perform the duties imposed on estate officer by or under the said Act, within the local limits of the jurisdiction in respect of public premises specified in corresponding entry in column (2) of the said table.

TABLE

Designation of the Officer	Categories of the public premises and local limits of jurisdiction
(1)	(2)
Senior Deputy Accountant General (Administration) or in case where no Senior Deputy Accountant General is so appointed, Deputy Accountant General (Administration), office of the Principal Accountant General (Audit), Jharkhand, Ranchi.	Public Premises under the Administrative Control of Principal Accountant General (Audit), Jharkhand, Ranchi.

[F.No. A-11013/12/2016-EG]

HARI KISHORE, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 6 दिसम्बर, 2016

का.आ. 2391.—राजनयिक और कौंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्द्वारा, केंद्र सरकार भारत के प्रधान कौंसलावास, जद्दा में श्री सलमान अहमद, सहायक अनुभाग अधिकारी को दिनांक 6 दिसम्बर, 2016 से सहायक कौंसुलर अधिकारी के तौर पर कौंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी.-4330/01/2015]

प्रकाश चन्द, उप सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 6th December, 2016

S.O. 2391.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Salman Ahmad, Assistant Section Officer as Assistant Consular Officer in Consulate General of India, Jeddah to perform the Consular services with effect from 6th December, 2016.

[No. T-4330/01/2015]

PRAKASH CHAND, Dy. Secy. (Consular)

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 14 दिसम्बर, 2016

का.आ. 2392.—केंद्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के वाणिज्य मंत्रालय (वाणिज्य विभाग) की अधिसूचना सं. का.आ. 2744, तारीख 2 जुलाई, 1983 में निम्नलिखित संशोधन करती है, अर्थात् :—

उक्त अधिसूचना से संलग्न सारणी के स्तंभ 1 में, “विशेष कर्तव्य अधिकारी (उचित सेवाएं-1 और विपणन)” शब्दों और कोष्ठकों के स्थान पर “वित्तीय सलाहकार और मुख्य लेखा अधिकारी” शब्द रखे जाएंगे।

[फा. सं. 1(1)/2006-टी.पी.]

विजय एन. कोठारी, निदेशक

टिप्पण : मूल नियम, भारत के राजपत्र में सं. का.आ. 2744(अ) तारीख 2 जुलाई, 1983 द्वारा प्रकाशित किए गए थे और तत्पश्चात् अधिसूचना सं. का.आ. 2913(अ) तारीख 7 सितम्बर, 2012 द्वारा संशोधन किया गया।

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 14th December, 2016

S.O. 2392.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Commerce (Department of Commerce) number S.O. 2744 dated the 2nd July, 1983, namely :—

In the Table appended to the said notification, in column 1, for the word, letters and brackets “Officer on Special Duty (Fair Services-1 and Marketing)”, the words “Financial Advisor and Chief Accounts Officer” shall be substituted.

[F.No. 1(1)/2006-TP]

VIJAY N. KOTHARI, Director

Note : The principal notification was published in the Gazette of India, vide number S.O. 2744, dated the 2nd July, 1983 and last amended vide notification number S.O. 2913 dated the 7th September, 2012.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स किरीबुरू आयरन ओर माइन ऑफ सेल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 18/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-26012/2/2000-आईआर (एम)]

राजेश कुमार, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 5th December, 2016

S.O. 2393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2007) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Kiriburu Iron Ore Mine of SAIL and their workman, which was received by the Central Government on 30.11.2016.

[No. L-26012/2/2000-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 18/2007**Date of Passing Award – 16th September, 2016****Between:**

The General Manager,
Kiriburu Iron Ore Mine of SAIL,
P.O. Meghahatuburu,
Dist. Singhbhum, Jharkhand

...1st Party-Management.**(And)**

The General Secretary,
NMDC Mine Workers Union,
At. Rajbhawan, Po. Jhinkpani,
Dist. Singhbhum, Jharkhand

...2nd Party-Union.**Appearances:**

Shri B.B. Tripathy, Legal Asst. RMD, SAIL

...For the 1st Party-Management.

M/s. B.C. Basita, Advocate

...For the 2nd Party- Union**AWARD**

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employer in relation to the management of Kiriburu Iron Ore Mines of SAIL and their workman in exercise of the

powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act vide its letter No. L-26012/2/2000 – IR (M) dated 31.05.2000 in respect of the following matter.

“Whether the demand raised by NMDC Mine Workers Union against the management of Kiribur Iron Ore Mine for reinstatement of Shri B.B. Paul, Electrician in service is justified? If yes to what relief the workman is entitled?”

2. Background facts giving rise to the present reference may be stated, in short, as follows:-

The workman Shri B.B. Paul joined at Kiribur Mines Limited on 28.4.1967 when the said mine was under the control of the National Mineral Development Corporation (in short NMDC). As per the stand of the 1st Party-Management the workman Shri Paul submitted an attestation form duly signed by him wherein he disclosed his date of birth as 2.1.1939 and he read up to Class VIII in Barakalapal M.E. School and while joining in the mines he went for a medical test for ascertaining his fitness to join in the post wherein he declared his age as 22 years. However, in other relevant service record such as B-Form Register, gradation/senior list maintained by the 1st Party-Management, Pay slips and service book the date of birth of the workman was shown as 1.1.1947. The Kiribur Mines came to the control of the 1st Party-Management SAIL and as such all service records maintained by NMDC for all its employees/workmen were handed-over to the custody of the Management i.e. SAIL. A gradation/seniority list was prepared and maintained by SAIL after such transfer of the mines wherein date of birth of Shri Paul was shown as 01.01.1947.

3. Having regard to the entry made in the attestation form submitted by the workman and date of birth shown in other records the Management issued a letter on 2.11.1991 along with a reminder on 2.1.1993 to Shri Paul to produce documents like birth certificate/school leaving certificate in original in support of his age. When he did not file any document in support of his date of birth and instead requested the Management to record his date of birth as 01.01.1947, he was directed to report before Medical Officer for determination of his age keeping in view the provisions enumerated in the circular/rules regarding determination of date of birth of the Management. According to the Management the workman Shri Paul failed to appear before the Medical Officer for determination of his age. The Rules of the Management with regard to determination of age of an employee/workman provides that, when date of birth of an employee is in dispute or found to be not identical in various records/documents, the highest age shown in the document or the age determined by the Medical Board is to be accepted by the Management. Keeping in view the above provisions the Management accepted the date of birth as 2.1.1939, which was reflected in the attestation form submitted at the time of joining and issued memorandum vide No. K.P-8(35)/67Admit/1004/1705, dated 26.8.1996 towards superannuation of the workman Shri Paul on 31.1.1997. Hence, the workman produced a duplicate school leaving certificate issued by Headmaster of Barakalapala M.E. School before the authority and made a prayer for acceptance of his date of birth as 01.01.1947. Since the workman produced such school leaving certificate at the fag end of his service despite being noticed earlier and taking the date of birth shown in the attestation form submitted by the workman at the time of his joining into consideration, the Management superannuated/discharged the workman on 31.1.1997. Being aggrieved, the workman raised a dispute through the Union before the labour machinery resulting the reference as mentioned in supra.

4. The 1st Party-Management has also challenged the maintainability of the reference and pleaded that no relief can be granted to the workman in view of the term and condition of the reference which does not mandate the Tribunal to determine the actual date of birth of the workman to be accepted by the Management for the purpose of his superannuation.

5. On the pleadings of the parties the points for determination are:-

Whether retrenchment/discharge/superannuation of the workman Shri B.B. Paul on 31.1.1997 was legal and justified (ii) Whether the reference is maintainable in view of term and condition of the reference and to what relief and (iii) to what relief the workman Shri Paul is entitled to?

6. The 2nd party-Union has examined the workman Shri Paul and exhibited documents like school leaving certificate of Shri Paul, xerox copy of medical book-page 652 dated 18.11.1994, xerox copy of circular of Kiriburu Iron Ore Mines dated 15.7.1978, xerox copy of petition submitted by Shri B.B. Paul to the Manager, Personnel/Admn. Kiriburu, xerox copy of order in the case No. K.T.S. 11/96, xerox copy of the notice of initial/periodical medical examination of Shri B.B. Paul, xerox copy of order sheet of C.W.J.C. 1820/97 @ dated 29.10.1998, xerox copy of pay slips of different months, xerox copy of memorandum dated 23.9.1993 in support of its stand whereas the Management has examined its Assistant Manager, Shri Ujjawal Kumar Mukherjee and relied upon documents like copy of letter dated 26.3.1967 to Shri B.B. Paul regarding appointment, medical certificate of Shri B.B. Paul, attestation form of Shri B.B. Paul, workman, memorandum dated 2.11.1991 to Shri B.B. Paul, memorandum dated 1.1.1993 to Shri B.B. Paul, memorandum dated 20.09.1993 to Shri B.B. Paul, circular of SAIL dated 17.3.1994 with enclosures, memo dated 22.7.1996 to Shri B.B. Paul to refute the stand taken by the 2nd party-Union to refute the stand taken by the 2nd Party-Union.

FINDINGS

7. As it emerges from the pleadings of the parties that there is no serious dispute to the fact that in various records of the 1st Party-Management in particularly seniority list prepared by the Management (Ext.-W/3) and pay slips issued in favour of the workman Shri Paul (Ext.-8), the date of birth of the workman Shri Paul is shown as on 1.1.1947. Besides, Management witness No. 1 has admitted in his cross examination that Form-B register is being maintained by the Management for the employees working inside the mines. In Form-B register maintained by NMDC vide Ext.-10 reveals the age of the workman 22 years at the time of his employment on 28.3.1967. Had the same been taken into consideration the workman was supposed to be superannuated on 31.7.2003. Admittedly the attestation form on the basis of which the workman was superannuated was submitted before the NMDC authority and as such the present Management witness is not expected to say about the authenticity of the entries made in the said attestation form. It cannot be over-sighted that the workman Shri Paul has denied to have submitted the said attestation form (Ext.-M/3) while being confronted by the Management during his cross examination. He has also claimed the signature available on the said attestation form does not belong to him. It cannot be over-looked the said attestation form was filled up in different inks and in different hand-writings which is visible in the naked eye. On bare comparison of the signature available on the said form and the admitted signature of the 2nd party-workman available in other documents of the case record are not identical. When the 2nd party-workman disowns the signature on the attestation form, the Management could have taken steps to prove that the same belonged to the workman. In the above back-drops entry with regard to the date of birth in the attestation form cannot be accepted or cannot be taken into reliance for ascertaining/determining the age of the workman.

8. At the same time it cannot be over-sighted that the Management had admitted that in B-Form register prepared at the time of joining of the workman reveals his age a 22 years. It is not disputed that the workman joined in the mines on 28.3.1967 and if the age shown in B-Form register is taken into consideration the date of birth of the workman was likely on 28.3.1945. There is no serious dispute to the claim of the Management that notice and a reminder was issued to the workman in the year 1991 and 1993 respectively to produce documents in support of his date of birth. The evidence adduced by the workman vide copy of the letter addressed to the Management reveals that the workman informed the Management that he lost his school leaving certificate for which he has applied for a duplicate certificate. It is not also disputed by the Management that before issue of order of superannuation, the workman produced a duplicate school leaving certificate (Ext.-W/1). According to the Management the said certificate was not taken into consideration as the same was produced at the fag end of service career of the workman and there was discrepancies between the name of the school mentioned in the attestation form and the name of the school which issued the certificate. When the entries in the attestation form are found to be in different ink and in different hand writings and there is no credible evidence that the said form was submitted by the workman duly signed by him, the discrepancies in regard to the name of the high school mentioned in the attestation form has no consequence. Undoubtedly, as a settled principle of law prayer for changing date of birth in service records should not be entertained at the fag end of service of an employee. The said principle is not applicable in the present case in view of some of the official records of the Management support the stand of the employee that his date of birth is 1.1.1947. The seniority list and the pay slips are the records belonging to the Management and it has presumptive value on account of the same being prepared by the Management itself. The only contention raised by the Management is that in view of the provisions enumerated in the Standing Order that when separate entries are found to be made in official records in respect to date of birth of an employee, the Management is to accept the highest age found in official records. As it emerges from the pleadings and evidence of the parties as discussed above that the highest age shown in the official record does not seem to have been entered/made by the workman himself. No credible evidence or material is laid before this Tribunal to suggest that such entry of highest age was made at the instance of the workman.

9. Pleading and argument has been advanced on behalf of the Management that keeping in view the provisions of the Certified Standing Order, the workman was issued with notice to appear before Medical Officer for determination of his age, when it was detected that separate date of birth are found in the official records. But the workman did not appear before the Medical Officer and as such he cannot take advantage of his age as shown in school leaving certificate. Undisputedly as per the provisions of the Certified Standing Order a workman is bound to appear before a Medical Officer for determination of his age if he raises dispute to his date of birth and fails to produce the documents like school leaving certificate or birth certificate. It is claimed by the Management that workman was issued with notice for his appearance before the Medical Officer but, he did not appear. The workman does not challenge the fact so far issue of notice to him for his appearance before the Medical Officer. According to him he had appeared before the Medical Officer and undergone for a medical examination for the purpose of determination of his age. It has been contended on behalf of the workman that the report of the Medical Officer is not produced by the Management and that the contention of the Management that he did not appear before the Medical Officer is not correct. In view of the stand taken by the workman, a heavy burden was cast upon the Management to prove that the workman did not appear before the Medical Officer. No Medical Officer of the Management has been examined in this regard so also register of hospital or dispensary was produced to refute the stand taken by the workman.

10. As per the settled principles, enunciated by the Hon'ble Apex Court in a catena of cases/decisions, unless a clear case on the basis of materials which can be held to be conclusive in nature, the court or the Tribunal should not issue a direction for change of date of birth of a government employee more particularly at the fag end of his service. Coming to the present case as discussed in supra it is worthy to note here that in some of the records of the Management the date of birth of the workman is shown as 1.1.1947. Moreover, he sought time to produce school leaving certificate after being issued with memorandum of superannuation. He also produced duplicate school leaving certificate wherein his date of birth is shown as on 1.1.1947. Besides, the Management has failed to establish the genuineness of the attestation form as well as the fact that the said attestation form was submitted by the workman by himself after duly signed by him. On the other hand the said attestation form is found to be filled up by different inks and in different hand writings and the so-called signature of the workman does not tally with the admitted signature of the workman. In that view of the matter the conclusion drawn by the Management about the date of birth of the workman does not seem to be correct and as such order of his superannuation on 31.3.1997 cannot be held legal and justified. In view of discussions made above and the documents relied upon by the 2nd party-Union, it can be safely concluded that the date of birth of the workman is 1.1.1947.

11. It has been contended on behalf of the Management that term of the reference is "whether the demand raised by NMDC Mine Workers Union against the management of Kiribur Iron Ore Mine for reinstatement of Shri B.B. Paul, in service is legal and justified and as a settled principle of law the Tribunal should not go beyond the scope of reference and determine the date of birth of the workman to be accepted by the Management for the purpose of his superannuation. In that view of the matter the Tribunal has no scope to pronounce that retrenchment of workman is illegal and unjustified. The present dispute giving rise to the reference is apparently out of superannuation of the workman which amounts to discharge and such discharge of the workman was due to acceptance of date of birth shown in the attestation form allegedly submitted at the time of joining by the workman. As such, the Tribunal cannot determine whether the demand of the Union for reinstatement of Shri Paul is justified and legal unless it gives a finding whether the discharge of Shri Paul was legal and justified and unless it ascertains the actual date of birth of the workman to be accepted by the employer. In the instant case the Management having made the workman retired determining his date of birth as 2.1.1939 without any proper verification despite some of its record speak otherwise. Hence the Tribunal is duty bound to entertain pleadings and evidence to give a finding on the date of birth of the workman for the purpose of official record and to pronounce whether discharge of the workman on 31.1.1997 was illegal and unjustified. Hence the contentions advanced by the Management have no legal force in the context of real dispute between the parties.

12. The next issue crucial to the reference is the relief to which the workman is entitled to on account of his untimely superannuation on 31.1.1997. It may be mentioned here that the age of superannuation was 58 years when the workman joined in the service and it has been enhanced to 60 years in the meanwhile. Had he continued in the service treating his date of birth as on 1.1.1947 he could be superannuated on 1.1.2007 since the upper age limit of superannuation was declared 60 years prior to the year 2005. Further, it cannot be over-looked that the workman did not render any service to the Management during the period from 31.1.1997 to 31.1.2007. Having regard to the above facts it would be just and appropriate to hold that the workman is entitled to 50% of the wages only to which he was entitled to, if he had continued in service on account of acceptance of his date of birth as on 1.1.1947. However, the period of untimely superannuation will be taken into consideration for calculation of other retirement/superannuation benefits.

13. Hence ordered that:-

The Management is directed to compensate the workman keeping in view the observation made in supra since no order of reinstatement can be passed in the instant case as the workman Shri Paul has already attained the age of superannuation in the meanwhile.

14. Accordingly the reference is answered.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बिसरा स्टोन लाईम कम्पनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 5/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-29011/71/2004-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2016

S.O. 2394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2005) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bisra Stone Lime Company Limited and their workman, which was received by the Central Government on 30.11.2016.

[No. L-29011/71/2004-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 5/2005

No. L-29011/71/2004-IR (M), dated 27.01.2005

Date of Passing Award – 5th October, 2016**Between :**

The General Manager,
Bisra Stone Lime Company Limited,
At./Po. Birmitrapur, Orissa

...1st Party-Management.

(And)

The President,
Birmitrapur Mazdoor Munch,
At./Po. Birmitrapur, Orissa,
Sundargarh

...2nd Party-Union.**Appearances:**For the 1st Party-Management ... NoneFor the 2nd Party-Union ... None**ORDER**

None of the parties are found present on repeated calls. It is seen from the record that after filing of Statement of claim the 2nd party-Union failed to attend the proceeding despite repeated notice. The 1st Party-Management has already submitted its written statement. The reference is lingering only due to non-attendance of the 2nd party-Union. As the Union failed to attend the proceeding as well as adduced any evidence in addition to its claim there is no alternative than to pass a no-dispute award and accordingly a no-dispute award is passed in the case.

2. The reference is answered in the above terms.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बोलानी ओर माइन्स के प्रबंधन के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 07/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30. 11.2016 को प्राप्त हुआ था।

[सं. एल-26012/33/1997-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2016

S.O. 2395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2005) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bolani Ore Mines and their workman, which was received by the Central Government on 30.11.2016.

[No. L-26012/33/1997-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 7/2005Date of Passing Award – 9th September, 2016**Between:**

The Deputy General Manager,
Bolani Ore Mines,
Raw Materials Division, SAIL,
At./Po. Bolani, Dist. Keonjhar,
Orissa

...1st Party-Management

(And)

The General Secretary,
Bolani Shramik Sangh,
At./Po. Bolani, Dist. Keonjhar,
Orissa

...2nd Party-Union.**Appearances:**

Shri B.B. Tripathy, Legal Asst. RMD, SAIL ... For the 1st Party-Management.

M/s. B.C. Basita, Advocate ... For the 2nd Party-Union.

AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of M/s. Bolani Ores Mines, Raw Materials Division, Steel Authority of India Limited, Keonjhar and their workman represented through Bolani Shramik Sangh in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act vide its letter No. L-26012/33/97 – IR (M) dated 04.02.2005 in respect of the following matter.

“Whether the action of the management of Bolani Ore Mines of Raw Materials of SAIL in not accepting the date of birth of the workman Shri Keshab Chandra Sasmal as 19.5.1943 and retiring him from service w.e.f. 30th April, 1995 is justified? If not, what relief the workman is entitled to?”

2. Shorn off unnecessary details facts giving rise to the above reference are that the workman Shri Keshab Chandra Sasmal joined in Bolani Ores Private Limited under the Management of SAIL on 04.04.1961. According to the 1st Party-Management Shri Sasmal could not produce any documentary evidence in support of his date of birth and as such, age shown in his medical certificate was taken into consideration and his date of birth was shown/entered as 21.4.1936 for all purposes of official record including the entry made in B-Form register. But, in the identity card issued by C.I.S.F. (Central Industrial Security Force) for the purpose of scrutiny/safety date of birth of Shri Sasmal was shown as 19.5.1943 inadvertently by the CISF agency. When the original B-Form register was not traceable, duplicate B-Form register was prepared in the year 1994 and during inspection of such service record when it was found that the date of the 2nd party-workman was 21.4.1936 and the said entry in the B-Form register found interpolated by another entry with date 19.5.1943, order was passed on 28.4.1995 towards superannuation of the workman with effect from

30.4.1994 and he was released from the services of the company vide Office Order dated 4.5.1995 with effect from 30.4.1995. Being aggrieved by such order of superannuation the workman preferred a Writ vide O.J.C. 3392/1995 challenging his superannuation order. The Hon'ble High Court, while disposing of the said writ, gave a direction to the Management to hold an enquiry after giving prior notice to the petitioner and to take a decision on merit as to whether the date of birth of the petitioner is 19.5.1943 as alleged by him or 21.4.1936 as contended by the Management.

3. It is the claim of the 1st Party-Management that an enquiry was conducted pursuant to the order of the Hon'ble High Court and claim of the workman was rejected. The 2nd party-workman raised an industrial dispute before the labour machinery resulting in the present reference. As per his claim statement he had submitted documentary evidence like school leaving certificate towards proof of his age at the time of his joining in the 1st Party-Management. As per school leaving certificate his date of birth was 19.5.1943 which was maintained in B-Form register of the Management. Basing upon such entry Identity card was issued to him wherein his date of birth was recorded as 19.5.1943. It is his further claim that a medical fitness certificate was required at the time of joining in service in which the Medical Officer mentioned his age apparently 25 years as on the date of issue of the certificate i.e. 21.4.1961 and the said certificate was not meant for ascertaining his age except giving a certificate whether the applicant was mentally and physically fit and free from communicable diseases to discharge his duty in the service. Taking advantage of such mention in the medical fitness certificate, the Management gave him premature retirement with effect from 4.5.1995 and such action being illegal and unjustified his discharge or disengagement should be declared illegal and he should be treated to have been reinstated for the purpose of all service benefits including wages for the period for which he could have continued till the date of superannuation to be calculated on the basis of date of birth as 19.5.1943.

4. Keeping in view the pleadings advanced by the parties the following issues have been settled for adjudication of the dispute between the parties.

ISSUES

1. Whether the reference is maintainable?
2. Whether the date of birth of the workman Shri Keshab Chandra Sasmal as recorded in the Service Book (21.4.1936) was correct?
3. If not correct, whether the action of the management in retiring the said workman on the basis of above date of birth was justified?
4. To what relief the workman is entitled?

5. The 2nd party-Union has examined the workman Shri Keshab Chandra Sasmal and exhibited documents like xerox copy of retirement order dated 4.5.1995, xerox copy of orders of Hon'ble High Court of Orissa in O.J.C. No. 3392/1995 dated 4.11.1996, xerox copy of the letter of workman Shri Keshab Chandra Sasmal, dated 6.1.1997, xerox copy of another letter of the workman dated 2.1.1997 with postal receipt, xerox copy of the circular dated 9.6.1982 of the Management, copy of the school leaving certificate of the workman, xerox copy of the identity card issued by the Management to the workman, xerox copy of the birth certificate issued to the elder brother of the workman, xerox copy of the birth certificate issued to the workman by the Executive Magistrate, Jagatsinghpur, xerox copy of the birth certificate issued to the workman by the village Sarpanch, whereas the Management has examined its Manager, (Personnel) Shri Parameswar Bhukta and relied upon documents like xerox copy of the Standing Order, xerox copy of the letter of the workman dated 4.4.1961, xerox copy of the medical report dated 21.4.1961 of Shri Sasmal, xerox copy of the service record of the workman Shri Sasmal, xerox copy of the Rules regarding determination of date of birth, xerox copy of the record of age/date of birth vide circular No. 9 of 1988, xerox copy of the B-register, copy of the letter of workman to A.G.M. Bolani Iron Mines, copy of the proceeding enquiry dated 21.1.1997, copy of the enquiry report held on 25.1.1997, copy of the letter dated 27.1.1997 of D.C.P.M. SAIL, Bolani to the workman, copy of the letter dated 5.2.1997 to the A.L.C.(C) Rourkela of General Secretary, Bolani Shramik Sangh, copy of the letter dated 27.2.1997 of D.C.P.M, SAIL, Bolani to the A.L.C.(C), Rourkela, xerox copy of the letter dated 29.1.1998 of Govt. of India, Ministry of Labour, and xerox copy of service records of Shri Sasmal.

ISSUE No. 2 & 3

6. Issue No. 2 and 3 being most crucial to the reference and inter related to each other are taken up together for consideration first for the sake of convenience.

7. As per the settled principle set out by the Hon'ble Apex Court in a catena of decisions the Court or the Tribunal should be careful and conscious while dealing with an application for correction of date of birth of an employee more particularly when the same has been sought at the fag end of service. Unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out and that too within a reasonable time as provided in the rules governing the service, the court or the Tribunal should not issue a direction or make a declaration on the basis of

materials which make such claim only plausible. The applicant has to produce credible and unimpeachable evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant to prove about the wrong recording of his date of birth in his service book. In many cases it is a part of strategy on the part of such public servants to approach the court or the Tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the service book. Keeping the above settled principles in view it is to be examined whether the disputant workman has produced any irrefutable evidence/proof relating to his date of birth including to his claim that the Management mentioned wrongly/deliberately 21.4.1936 as his date of birth without any basis when his actual date of birth was on 19.5.1943 as mentioned in his school leaving certificate. Though the workman claims to have submitted his original school leaving certificate before the Management at the time of his joining, there is no documentary evidence to that effect except his oral version. He admits submission of medical certificate at the time of his joining and to that effect he has not raised any serious dispute towards the genuinity of the medical certificate marked Ext.-B by the Management. According to him Ext.-B medical certificate was issued towards his medical examination for ascertaining his fitness to join in the service and such medical examination was not held for any purpose of determination of his age. At the same time it cannot be ruled out that usually Medical Officer mention the age of examinee on the basis of his statement and as such age mentioned in such medical certificate has presumptive value till the same is rebutted by clinching and unimpeachable evidence.

8. The workman has only produced a duplicate school leaving certificate allegedly issued by the School Headmaster after his superannuation. The person issuing the certificate has not been examined to prove the genuinity of the entry made in the school leaving certificate. All other documents relied upon by the workman towards proof of his age except entry made in the identity card issued by C.I.S.F. are obtained after his superannuation. On the other hand the evidence of the Management including the documents relief upon by it more particularly medical examination report (Ext.-B), B-Form Register (Ext.-G), service book (Ext.-R) reveal that the workman was aged about 25 years when he joined in service and his date of birth is shown as 21.4.1936 in B-Form register and service book and such entry is apparently interpolated by making another entry of date as claimed by the workman. Besides, it cannot be over-sighted that in the school leaving certificate produced by the workman he has been named as “Keshaba Charan Sasmal”. There is no serious dispute to the fact that Identity card was issued by the C.I.S.F. agency and no personnel of C.I.S.F. agency has been examined to ascertain as to what basis date of birth of the workman was mentioned in the said Identity card. As per settled principle burden always lies on the employee to prove that the Management/employer committed mistake in recording the date of birth. As discussed earlier the workman appears to have failed miserably or failed to produce any unflinching and irrefutable evidence to prove the above action of the Management i.e. the Management committed the error in recording the date of birth wrongly.

9. Undisputedly, the service rules of the Management provides that every employee must declare his date of birth in the application or the prescribed form before his first appointment and must produce confirmatory evidence in support of his declaration and mentioned there-under. No person should be allowed to join in the services of the company without his date of birth having been declared/recorded as prescribed. In view of such rule, if the B-Form register is taken into consideration it can be safely inferred that date of birth mentioned in the said B-Form must be on the basis of a declaration made by the workman. Further, as per the rules in case of any difference between the age declared in the affidavit and the age certified by the Medical Board, the higher age shall be accepted and recorded. The Rule 4.7 further prescribes as to how date of birth of a workman is to be calculated/determined and keeping in view the said rule the determination of date of birth of the workman on the basis of Ext.-B cannot be discarded out-rightly. It cannot also be over-sighed that when service record of the workman discloses his date of birth is 21.4.1936, the workman did not make any effort to change the same by producing documentary evidence towards proof of his age and he obtained the school leaving certificate after his superannuation. Further, the discrepancy with regard to the name of the school mentioned in his service book and the duplicate school leaving certificate produced by him cannot be over-looked in view of settled principles enunciated by the Hon’ble Apex Court in the matter of change of date of birth in service record. Having regard to the above facts and circumstances discussed above it can be safely held that the Management had not committed any error in superannuating the workman taking his date of birth as 21.4.1936. Accordingly these two issued are answered in favour of the Management.

10. In view of above findings other issues need no answer/discussion further.

11. Therefore no illegally or unjustified action seems to have been noticed in making the workman Sasmal to retire with effect from 30.4.1995. The reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स जगन्नाथ सेक्यूरिटी मेंटेनेंस सर्विस एण्ड सप्लाय एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 36/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-43011/4/2011-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2016

S.O. 2396.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Jagannath Security Maintenance Service and Supply and others and their workman, which was received by the Central Government on 30.11.2016.

[No. L-43011/4/2011-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 36/2012

No. L-43011/4/2011-IR (M), dated 27.02.2012

Date of Passing Award – 21st October, 2016**Between:**

1. M/s. Jagannath Security Maintenance Service & Supply, Contractor of Bangur Chromite Mines of M/s. OMC Ltd., Po. Dhanurjapur, Dist. Keonjhar, Orissa

2. The Regional Manager, Bangur Chromite Mines of M/s. OMC Ltd., Dhanurjapur, Dist. Keonjhar, Orissa

...1st Party-Managements**(And)**

The General Secretary,
Boula Regional Chromite Mines Worker's Union,
At./Po. Dhanurjapur, Dist. Keonjhar, Orissa

...2nd Party-Union.**Appearances:**

Shri Bidyadhar Singh	...	For the 1 st Party-Management No. 1.
Shri S.R. Pattnaik, Sr. Manager (Legal)	...	For the 1 st Party-Management No. 2.
None	...	For the 2 nd Party-Union.

ORDER

On 28.9.2016 representatives for the Management No. 1 is present and files hazira. None appears on behalf of the 2nd party-Union and the Management No. 2 on repeated calls. It is seen from the record that after filing of Statement of

claim the 2nd party-Union failed to attend the proceeding despite repeated notice. The Management No. 1 has already submitted its written statement whereas the principal employer, Management No. 2 has also filed written statement. The reference is lingering only due to non-attendance of the 2nd party-Union. As the Union failed to attend the proceeding as well as adduced any evidence in addition to its claim there is no alternative than to pass a no-dispute award and accordingly a no-dispute award is passed in the case.

2. The reference is answered in the above terms.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 40/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-17012/31/2011-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2016

S.O. 2397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 30.11.2016.

[No. L-17012/31/2011-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 40/2012

Date of Passing Award – 21st October, 2016

Between:

The Sr. Divisional Manager,
LIC of India,
Bhubaneswar Divisional Office,
Jeevan Prakash, Unit-7, Surya Nagar,
Bhubaneswar – 751 001

...1st Party-Management

(And)

Shri Dwijabar Sahoo,
At./Po. Nabaghanpur, Dist. Nayagarh,
Orissa

...2nd Party-Workman

Appearances:

M/s. B.P Satapathy, Advocate	...	For the 1 st Party-Management.
M/s. Archana Mishra, Advocate	...	For the 2 nd Party-Workman

AWARD

This award arises out of the reference with the following schedule:-

“Whether the action of the Management of Life Insurance Corporation of India, Bhubaneswar, in terminating the services of Shri Dwijabar Sahoo without complying the provision of Industrial Dispute Act, 1947, is legal and justified? What relief the workman is entitled to?”

made by the Government of India, Ministry of Labour & Employment between the employers in relation to the Management of Indian Bank and their workman in exercise of the powers conferred by clause (d) of Sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide letter No. L-17012/31/2011 – IR(M), dated 13.03.2012.

2. Briefly stated, the facts giving rise to the reference as revealed from the statement of claim is that the 2nd party-workman Shri Dwijabar Sahoo was working as a badali worker from the period from 1985 to 27.1.1996 intermittently in the branch office of the 1st Party-Management at Nayagarh on daily wage basis and his such engagement was based on the basis of the order of the Regional Manager, LIC, Cuttack. He was receiving remuneration and Bonus for the period of his job at a rate equivalent to the wage provided to sub-staff of the 1st Party-Management. It is the claim of the 2nd party that he was duly selected to work as badali worker after observation of all formalities of selection and he was discharging his duties with all sincerity and devotion. According to him he worked for more than 240 days in the calendar year 1989. As he was sincere to his duty different Branch Managers posted in the branch office made correspondences to their higher authority for regularization of his service and his name was sponsored from time to time for his selection against permanent sanctioned post and he was empanelled in the list of successful candidates for such permanent absorption. It is alleged by him that his service as badali worker was terminated suddenly on 27.1.1996 without assigning any reason and without compliance of the provisions of the Industrial Disputes Act and such action of the Management is out rightly illegal and unjustified. He was victim to unfair labour practice adopted by the Management. Hence a dispute was raised before the labour machinery resulting in the present reference.

3. The 1st Party-Management has submitted its written statement denying the claim of the 2nd party-workman and pleading inter alia that the service of the 2nd Party-workman was taken only intermittently at the time of need when a staff/sub-staff remained absent from his duty. His engagement was purely on temporary and daily wage basis and in no point of time he was engaged for more than 240 days in a calendar year. As he was never given appointment either on a temporary or daily wage basis as a badali worker, there was no scope of employer and employee relationship between the workman and the Management to attract any provisions of the I.D. Act in the dispute raised by the workman. A further stand has been taken on behalf of the Management that a recruitment rule is being adopted by the Management for appointment to the sanctioned/permanent post of Class-IV category and neither the Branch Manager nor his superior authority is vested with any power to appoint any one as a badali worker as claimed by the workman and as such, he was never selected to work as a badali worker or sub-staff in the branch office of the 1st Party-Management at Nayagarh. The engagement of the 2nd party being a temporary in nature and on need basis there was no question of termination/disengagement of the 2nd party from his service and there was no violation of any provisions of section 25-F of the I.D. Act.

4. On the aforesaid pleadings following issues have been settled for adjudication of the reference.

ISSUES

1. Whether the action of the Management of Life Insurance Corporation of India, Bhubaneswar, in terminating the services of Shri Dwijabar Sahoo without complying the provisions of Industrial Disputes Act, 1947 is legal and justified?

2. What relief the workman is entitled to?

5. Oral as well documentary evidence have been adduced by both the parties in support of their respective pleadings and contentions. Besides, examining himself the workman has filed/exhibited copy of recruitment of sub-staff dated 27.5.1989, copy of experience certificate, copy of Bio Data of the 2nd party, copy of experience certificate, copy of experience certificate, copy of interview letter dated 28.6.2001, copy of report of the Central Information Commission, copy of paper advertisement, copy of appointment of peons in the LIC of India, copy of rejection letter of the 2nd party dated 11.8.2011, copy of office order dated 24.2.2012, copy of money receipt dated 28.5.2011, copy of Bonus calculation sheet from 1.4.1988 to 31.3.1989, copy of reply on R.T.I. Application dated 15.5.2013 marked as Ext.- 1 to 15. To refute the claim of the 2nd party the Management has examined Shri Dilip Nandi and filed letter of authorization of the Management dated 19.1.2015, copy of the regulation of the Management towards appointment, probation and termination of service, copy of the register containing statements of transfer/temporary appointment of employees marked as Ext.- A to C.

FINDINGS**ISSUES No. 1 & 2**

6. Both the issues are taken into consideration for the sake of convenience. As it appears from the pleadings and contentions raised by the parties that there is no serious dispute to the fact that the 2nd party was being engaged in the branch office of the 1st Party-Management at Nayagarh on temporary and daily wage basis and his engagement was intermittent. The documents filed by the parties also reveal that he was paid wages as well as Bonus for the period of his temporary engagement. There is no document to the effect that any procedure was followed while making engagement of the workman. There is neither any pleading nor any evidence on behalf of the 2nd party to establish that the 2nd party-workman was given appointment letter either on temporary or on casual basis. However no serious dispute is emerging to the fact that the 2nd party-workman was engaged on daily wage basis, temporarily and intermittently and his engagement was not against any sanctioned or permanent post. As per the pleadings and evidence of the 2nd party-workman his engagement was never exceeded 240 days in a calendar year except in the year 1989 in which he has claimed to have worked for 241 days. Law is well settled that to avail the benefit of provisions of Section 25-F the claimant-workman is to prove his engagement/appointment for more than 240 days continuously in a calendar year preceding to his alleged termination.

7. Coming to the case at hand, the workman has pleaded and stated in his evidence that he worked for the 1st Party-Management from 1985 to 27.01.1996 and he was disengaged there-after. If his version is accepted in toto a burden lies on him to show that he was engaged for more than 240 days preceding to the alleged date of disengagement i.e. 27.1.1996. In that respect there is neither any oral claim or documentary evidence to establish that the workman was engaged as a casual/daily wager for more than 240 days continuously and uninterruptedly except public holidays prior to his alleged disengagement in order to avail the benefits guaranteed under the provisions of the I.D. Act. The documents relied upon by the workman reveal only that he was engaged temporarily as badali worker and no document filed by him suggests that he was ever given engagement for more than 240 days continuously in a calendar year. As per the settled principles when the workman fails to establish that he had worked for 240 days continuously and uninterruptedly in the preceding calendar year just prior to his disengagement then there is no need of complying Section 25-F of the I.D. Act.

8. Further, it cannot be over-sighed that the 2nd party-workman was engaged intermittently and his engagement was on need basis as a daily wager. Hence question does not arise for termination or disengagement of his service. In a catena of decisions including the case between Himanshu Kumar Vidyarthi and Others -Versus- State of Bihar and others the Hon'ble Apex Court have propounded that disengagement of temporary employees working on purely on daily wages cannot be construed to be a retrenchment under the I.D. Act as the concept of "retrenchment" cannot be stretched to such an extent to cover these employees. Since they are only daily waged employees and have no right to the posts, their disengagement is not arbitrary. In that view of the settled principle the 2nd party-workman cannot be said to have any right to the Class-IV post and as he was never engaged as a badali worker for more than 240 days continuously in a calendar year and his engagement was purely temporary and on need basis, his termination or disengagement as claimed in the schedule of the reference cannot be termed as unjust and illegal.

9. In view of the above conclusion, the 2nd party-workman is not entitled to any relief claimed by him.

10. Reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2398.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स श्री कृष्णा इंजीनियरिंग एण्ड कंस्ट्रक्सन कंपनी एवं तीन अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 59/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-26011/1/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2016

S.O. 2398.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2014) of the Central Government Industrial Tribunal/Labour

Court, Chennai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Sri Krishan Engineering and Construction Co. and three others and their workman, which was received by the Central Government on 30.11.2016.

[No. L-26011/1/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 4th November, 2016

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 59/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Sri Krishna Engineering & Construction Co. & Three Others and their workman)

BETWEEN :

The General Secretary : 1st Party/Petitioner Union
The Mazdoor Harbour Worker's Union
"Bhagat House". 48, Prakasam Salai
Broadway
Chennai-600108

AND

1. Sri Krishna Engg. & Construction Co. : 2nd Party/1st Respondent
"Kalyani", No. 9/2
MVP Colony
Visakhapatnam-630017
2. The Regional Manager : 2nd Party/2nd Respondent
Vizag Steel Plant
Chennai-600034
3. M/s. Rashtriya Ispat Nigam Ltd. : 2nd Party/3rd Respondent
RINL VSP Administrative Bldg.
Visakhapatnam-530031
4. The Management : 2nd Party/4th Respondent
M/s. Sundar & Company
22 Jones Street
Chennai-600001

Appearance:

For the 1st Party/Petitioner : M/s. Balan Haridas, Advocates
For the 2nd Party/1st Respondent : M/s. T.S. Gopalan & Co., Advocates
For the 2nd Party/2nd & 3rd Respondent : M/s. Sarvabhauman Associates, Advocates
For the 2nd Party/4th Respondent : M/s. J. Senthil Kumar, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-26011/1/2014-IR (M) dated 09.07.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Srikrishna Engineering and Construction Company in denying employment to Sri S. Jayaraman and 55 (list enclosed) others are legal and justified? If not to what relief the concerned workmen are entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 59/2014 and issued notices to both sides. Both sides entered appearance through their counsel and filed their claim and counter statement respectively.

3. The averments in the Claim Statement in brief are these:

The Second Respondent has a Stockyard located at Manali for storing its pig iron and steel materials. The Second Respondent had been appointing Handling Contractor for handling and storage of materials in the Stockyard and for the purpose of transportation of steel consignments from the Stockyard to customer premises and to other Stockyards for second and Third Respondents. Initially the Second Respondent had awarded the work of handling, storage and transportation to M/s. Sunder & Co. Sunder & Co. had engaged the service of 56 employees who are concerned in the dispute to do the work. They have been working for the period ranging from 15-22 years continuously. All the workers are members of the Petitioner Union. Sunder & Co. had been entering into settlement with the Petitioner Union relating to service conditions of the employees. the Contractor was only a middleman. The workers had been doing work of the Second Respondent which is perennial in nature. The Contractor was only a name lender. The First Respondent had now been inducted as the new Contractor. It had stopped all the 56 employees concerned in the dispute and replaced them with new employees. Thus the concerned employees were illegally denied work from 13.12.2013. Even if the contract changes the employees concerned should be allowed to continue. The Respondents cannot replace one set of employees with another set of employees. The concerned employees had worked for more than 480 days continuously within a period of 24 calendar months. They are to be deemed permanent employees under Section-3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act. The service of the concerned workmen could not be dispensed with on change of the Contractor. The termination is in violation of Section-25(F) of the ID Act. An award may be passed holding that denial of employment to the concerned workmen is illegal and also direct the Respondents to reinstate the 56 employees concerned in the dispute with full backwages, continuity of service and all other benefits.

4. The First Respondent has filed Counter Statement contending as below:

The First Respondent is engaged in the business of undertaking steel products of Steel Plants in the various steel yards of the respective companies. It was also acting as a handling Contractor. In the year 2013 the Third Respondent awarded the First Respondent a contract of Steel Handling in the stockyard of the Second Respondent for a period of 7 years from 11.12.2013. The First Respondent never employed the 56 persons on whose behalf the dispute is raised. The First Respondent did not terminate them from employment also. The first Respondent has no obligation to provide employment to the 56 persons. The Second Respondent handed over to the First Respondent the space in the yard and the materials on 11.12.2013. The First Respondent has been carrying out the work with 18 workmen. The petitioner union is not entitled to any relief.

5. The Second Respondent and third Respondents have filed joined Counter Statement contending as below:

There is no employer-employee relationship between the Respondents 2 and 3 and the concerned workmen. M/s. Sunder & Co. who are said to have engaged the concerned workmen is not made a party to the dispute. The contract with Sunder & Co. expired in the year 2012. Open tender was called for after this and several companies had participated in the tender. The tender quoted by the First Respondent was accepted. The work has been assigned to the First Respondent to handle the arrivals, stacking, storage and also security and the delivery of iron and steel materials. As per the contract entered into between the Second Respondent and First Respondent the First Respondent is entitled to appoint workers as per their requirements. The contract does not give any continuity of service to the workers and when the Contractor changes it is within the right of new Contractor to appoint workers of their choice. The concerned workmen are not entitled to any relief under Section-3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status) Act. The Second and Third Respondents were informed that M/s. Sunder & Co. had settled the gratuity, provident fund and other service dues to all its employees. The petitioner is not entitled to any relief.

6. Sunder & Co. had been impleaded as the Fourth Respondent on application before this Tribunal. This Respondent had filed Counter Statement as below:

The Fourth Respondent is a licensed Contractor of the Second Respondent. The contract came to an end by November 2013. Consequent to the termination of the contract, as per the terms of the settlement made between the Petitioner Union and the Fourth Respondent the Fourth Respondent has paid compensation to all the concerned workmen. The workmen cannot have any further claim for employment or any other claim against the Fourth Respondent. The workmen were paid substantial amounts on expiry of the contract. The petitioner is not entitled to any relief.

7. The evidence in the case consists of oral evidence of WW1 and MW 1, 2 & 3 and Ext.W1 to Ext.W11 and Ext.M1 to Ext.M34

8. **The points for consideration are:**

- (I) Whether the action of the First Respondent in denying employment to the workmen concerned is legal and justified?
- (II) What, if any, is the relief to which the concerned workmen are entitled?

The Points

9. The Pig Iron and Steel manufactured by the Third Respondent used to be transported to the stockyard belonging to the Second Respondent and stacked there. The Third Respondent used to engage Contractor for receiving and handling the materials at the yard. The Fourth Respondent who was subsequently impleaded as a party to the dispute had been the Contractor who was doing the work of handling, storage and transportation of the materials at the yard. The Fourth Respondent had engaged the concerned workmen for doing the work of storage, transportation, etc. The contract between the Fourth Respondent and the Company expired in the year 2013. New tenders were called and the quotation of the First Respondent who also participated in the tender alongwith the Fourth Respondent was accepted and thus the First Respondent became the handling Contractor from 11.12.2013. The First Respondent seems to have engaged new workmen rather than allowing the 56 workmen concerned who handled the work under the 4th Respondent to continue. The claim of the Petitioner on behalf of the concerned workmen is that denial of work to the 56 employees is not legal.

10. In the Claim Statement the petitioner has sought a direction against the Respondents to reinstate the 56 employees concerned in the dispute. Before the Deputy Chief Labour Commissioner (Central) the claim of the petitioners seems to have been only against the First Respondent, the new Contractor. In Ext.W9-the letter by the Union to the Assistant Labour Commissioner the claim is that all the 56 workmen concerned were employed as contract labours in the stockyard at Manali for more than 15-22 years through erstwhile Contractor M/s. Sundar & Co., but a new Contractor by name Srikrishna Engineering and Construction Co. i.e. the First Respondent had been given contract on 03.10.2013 but the new Contractor had refused to engage the concerned workmen and that the matter of non-employment of the concerned workmen by the new Contractor shall be taken for conciliation. As seen from Ext.W11-the failure report, the First Respondent has taken a stand before the Conciliation Officer that there is no employer-employee relationship between it and the concerned workmen and they have no obligation to employ the workmen. On this basis the schedule of reference is regarding non-employment by the First Respondent only. However, in the Claim Statement the petitioner has changed its stand to some extent by not claiming relief against any particular Respondent/Respondents but only seeking a direction against the Respondent to reinstate the 56 employees. In the Claim Statement the petitioner has taken a further stand that the contractor i.e. the Fourth Respondent herein was only a name lender and that the workmen had been doing work which is perennial in nature. This is a stand very much against the one which has been taken before the Labour Commissioner.

11. The Petitioner does not seem to be very much sure until the last stage against whom relief is to be sought. Even after impleading the Fourth Respondent under whom the concerned workmen were working the Petitioner has not specified against whom it requires relief.

12. The First Respondent, as stated, has taken the stand that there was never any employer-employee relationship between it and the concerned workmen and it has no liability or obligation to employ the concerned workmen. The Second and Third Respondents also have taken the stand that they had no employer-employee relationship with the concerned workmen, but it was the Fourth Respondent who was earlier handling the work who had employed them. The Fourth Respondent who had come to the arena at the very late stage had contended that even as per the contract with the concerned workmen they were entitled to be in their service only till the contract with the Second Respondent expired and that after the contract came to an end they have paid all the dues to the concerned workmen.

13. Though, a vague attempt has been made in the Claim Statement and also during evidence to make out that the contractors were only name lenders, but the Second and Third Respondents were the real employers, no real attempt has been made to establish such a case. Again, if this was the case the relief should have been claimed only against Second and Third Respondents and not against other Respondents.

14. It could be seen from the evidence, both documentary as well as oral that the concerned workmen had been entering into settlement with the Fourth Respondent regarding the terms of their employment. Ext.W1 to Ext.W3 are these settlements of 1994, 1996 and 2005 respectively. The first one is under Section-12(3) of the ID Act and the other two are under Section-18(1) of the Act. Exts.M17 to 22 are the extension of handling contract issued by the Second Respondent to the Fourth Respondent. As could be seen even after contract was given to the First Respondent, extension was given for the purpose of handing over the material and the site to the First Respondent. WW1, the General Secretary of the Petitioner Union who is the sole witness examined on behalf of the petitioner has stated that settlement were being signed with the Fourth Respondent from 1994 onwards and that in all these the Fourth Respondent is referred to as the Contractor of the Second Respondent. As per Clause-18 of Ext.W3 the Contractor will

not be responsible for providing job beyond the period of contract. WW1 has admitted during his cross-examination that the contract between the Fourth and Second Respondent came to an end in April 2013. According to WW1 even though there is provision for settlement of gratuity and service payments in the contract, the workers used to continue in the employment of the Contractor even after receiving these benefits and on expiry of the contract. It could be seen from the evidence that from the beginning till the First Respondent was inducted as the Contractor the Fourth Respondent acted as the Contractor under three different contracts and the concerned workmen were all along doing the work under the Fourth Respondent. It is apparent from the admission of WW1 itself that the concerned workmen were working under the Fourth Respondent directly and had nothing to do with the Second or Third Respondents. The very fact that settlements used to be entered into between the workmen and the Fourth Respondent fortifies the fact that they were workers of the Fourth Respondent only. This being the case, the Second or Third Respondent are not liable for any relief in respect of the concerned workmen. The reference is silent on any such claim also.

15. The First Respondent also is not liable to provide any relief to the concerned workmen. In fact at the initial stage the claim was only against the First Respondent. As per the schedule of reference itself the claim is only against the First Respondent. The only question raised in the schedule of reference is against denial of employment by the First Respondent to the concerned workmen. However, the First Respondent had never employed the concerned workmen. There was no employer-employee relationship between the First Respondent and the concerned workmen. The dictum that a contract worker cannot be changed cannot be made applicable in the present case. It applies only if the Contractor is the same. The First Respondent who has been inducted as the Contractor has no commitment to the concerned workmen and is not liable to take in the concerned workmen who were employees of the Fourth Respondent. So the petitioner is not entitled to any relief against the First Respondent.

16. As stated the Fourth Respondent was impleaded at a late stage and no specific claim was made against any of the Respondents and no specific claim was made against the Fourth Respondent also after it was impleaded. However, at the stage of argument the counsel for the petitioner has submitted that in any case the concerned workmen are entitled to compensation from the Fourth Respondent under Section-25(F) of the Industrial Disputes Act. The Fourth Respondent has taken a contention that on expiry of the contract with the Second Respondent it had paid all its dues to the concerned workmen. Ext.M34 (series) are produced to prove this. There is evidence given by MW3 on behalf of the Fourth Respondent also in this respect. Ext.M34 (series) contain the termination letters issued by the Fourth Respondent to each of the concerned workmen after it failed to renew its contract with the Second Respondent. The letter states that Rs. 40,000/- have already been paid towards settlement. There is a sheet showing calculation of the amount of gratuity payable to each of the employees also. It has been admitted by MW3 during cross-examination that only gratuity has been paid to the employees on expiry of the contract and no amount has been given by way of compensation.

17. According to the Fourth Respondent the employees are not entitled to any compensation since their disengagement will not amount to retrenchment. According to them it comes under Section-2(oo)(bb) of the ID Act. As per this sub-section termination of service of workman as a result of non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf will not be retrenchment. Ext.W1 and other settlements entered into between the Fourth Respondent and the Union on behalf of the concerned workmen contains a clause for settlement of gratuity, service payments, etc. as per government laws at the time of expiry of period of the contract. Thus it could be seen from these settlements that the Union on behalf of the concerned workmen has admitted the fact that the employment is to come to an end on expiry of the contract between the Fourth Respondent and the Second Respondent. Probably the Union was very much aware of this when the dispute was raised by Ext.W9, the letter written by it to the Assistant Labour Commissioner. In this, while requesting the Assistant Labour Commissioner to conciliate the matter of non-employment of the concerned workmen by the First Respondent, the petitioner has categorically stated that the Fourth Respondent had complied with the provisions of Contract Labour Regulation and Abolition Act and also all statutory obligations of the Central Government Labour Laws. Thus there is an admission in Ext.W9 itself that the Fourth Respondent has already paid the dues to the workmen on expiry of the contract.

18. Even otherwise the petitioner is not entitled to make a claim against the Fourth Respondent in view of the very reference. As per the reference relief is claimed only against the First Respondent. The Fourth Respondent was not even a party before the Assistant Labour Commissioner. The petitioner never thought of claiming any relief against the Fourth Respondent, probably on account of the fact that whatever dues have been paid or agreed to be paid.

19. The counsel for the petitioner has referred to the decision of the Madras High Court in AMANULLAH VS. CHENNAI PORT TRUST AND ANOTHER reported in 2014 SCC ONLINE MADRAS 6797 in this respect. Here it was held that the Labour Court in order to render substantial justice is empowered to adjudicate the real dispute between the parties and the order of reference is capable of interpreting to the effect that the Labour Court can go into the incidental issue also. However, the present claim of the petitioner against the Fourth Respondent cannot be treated as an incidental issue. No issue was raised against the Fourth Respondent at all and it was not a subject matter of

reference also. The dispute raised was only against the First Respondent. So even if the concerned workmen were entitled to any relief against the Fourth Respondent, it could not have been considered in this reference.

20. In view of my discussion above the concerned workmen are not entitled to any relief. The reference is answered against the petitioner.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 4th November, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri K. Ravi
 For the 2nd Party/Managements : MW1, Sri K. Anil Kumar
 MW2, Sri S. Gunasekaran
 (Original deposition is missing.
 Replaced with photocopy obtained from one of the parties)
 MW3, Sri M. Kumaravel

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	05.09.1994	Settlement under Section 12(3) of Industrial Disputes Act, 1947
Ext.W2	01.06.1996	Settlement under Section-18(1) of Industrial Disputes Act, 1947
Ext.W3	10.07.2005	Settlement under Section-18(1) of Industrial Disputes Act, 1947
Ext.W4	03.10.2013	Letter of 3 rd Respondent awarding contract to the 1 st Respondent
Ext.W5	16.11.2013	Letter of the 1 st Respondent to Police
Ext.W6	16.11.2013	Letter of the 1 st Respondent to Police
Ext.W7	19.11.2013	Letter of the 1 st Respondent to Police
Ext.W8	25.11.2013	Letter of the Petitioner to the 3 rd Respondent
Ext.W9	16.12.2013	Dispute raised by the Union
Ext.W10	21.01.2014	Letter given by the Petitioner Union to the Conciliation Officer
Ext.W11	31.01.2014	Conciliation failure report

On the Management's side

Ex.No.	Date	Description
Ext.M1	-	Open tender for steel handling work only extract (extract of internal pages 3 of 102, 4 of 102, 5 of 102, 6 of 102, 7 of 102, 8 of 102, 24 of 102, 25 of 102, 26 of 102, 27 of 102, 28 of 102, 29 of 102, 41 of 102, 49 of 102, 50 of 102, 51 of 102, 52 of 102, 53 of 102, 54 of 102, 55 of 102, 56 of 102, 57 of 102, 58 of 102, 59 of 102, 60 of 102, 60 of 102, 73 of 102, 77 of 102, 78 of 102, 85 of 102)
Ext.M2	-	List of 18 employees with their insurance number under ESI Act and their Account Number under Provident Fund Act
Ext.M3	15.09.2010	Letter from ESI Corporation, Chennai to M/s. Sri Krishna Engineering and Construction Company, Manali, Chennai allotting sub-code number 51-62-034209-001-1006

Ext.M4	09.01.2014	License issued by ALC (C), Pondicherry to M/s. Sri Krishna Engineering & Construction Co. for steel materials handling work at M/s. R I N – Stockyard at Sathankkadu, Manali, Chennai upto 08.11.2015
Ext.M5	03.05.2005	Contract issued by the 3 rd Respondent to M/s. Sundar & Company alongwith terms and conditions
Ext.M6	03.10.2013	Letter of acceptance issued to the 1 st Respondent by the 3 rd Respondent
Ext.M7	21.10.2013	Letter issued by Ms. Sundar & Co. to the petitioner
Ext.M8	02.11.2013	Letter issued by the 2 nd Respondent
Ext.M9	15.11.2013	Letter issued by the 2 nd Respondent
Ext.M10	16.11.2013	Letter issued by the 2 nd Respondent
Ext.M11	19.11.2013	Letter given by M/s. Sundar & Co. to the Joint Commissioner of Police
Ext.M12	19.11.2013	Letter given by M/s. Sundar & Co. to the 2 nd Respondent
Ext.M13	24.01.2014	Letter issued by M/s. Sundar & Company
Ext.M14	27.01.2014	Termination letter issued by M/s. Sundar & Co.
Ext.M15 & Ext.M15(a)	26.04.2014	Letter issued by the 2 nd Respondent to M/s. Sundar & Company
Ext.M16	05.09.1994	Translation of Settlement under Section-12(3) of the Industrial Disputes Act, 1947
Ext.M17	18.04.2012	Extension of handling contract issued by 2 nd Respondent Company from May 2012-August 2012
Ext.M18	31.08.2012	Extension of handling contract issued by 2 nd Respondent Company from August 2012-January 2013
Ext.M19	01.02.2013	Extension of handling contract issued by 2 nd Respondent Company from February 2013-March 2013
Ext.M20	23.04.2013	Extension of handling contract issued by 2 nd Respondent Company from April 2013-September 2013
Ext.M21	02.09.2013	Extension of handling contract issued by 2 nd Respondent Company from September 2013
Ext.M22	11.09.2013	Acceptance of extension of handling contract by the applicant company till 15.11.2013
Ext.M23	15.11.2013	Letter sent by 2 nd & 3 rd Respondent to implead party to handing over of material
Ext.M24	24.01.2014	Letter sent by the impleaded party M/s. Sunder & Company to the Petitioner Union General Secretary Mr. V.K. Balakrishnan
Ext.M25	24.01.2014	Letter sent by the Impleaded party M/s. Sunder & Co. to the Petitioner Secretary Mr. A. Panneerselvam
Ext.M26	27.01.2014	Letter sent by the impleaded party M/s. Sunder & Company to Petitioner Union General Secretary regarding the intimation of termination letter sent to 56 employees
Ext.M27	27.01.2014	Termination letter issued to each of the 56 workmen by the impleaded party (M/s. Sunder & Company) –Specimen Copy
Ext.M28	09.08.2014	Letter sent by the impleaded party's Advocate to each of the 29 employees those who have not come forward to collect the settlement gratuity with the petitioner, putting them a notice to collect gratuity payment within a week, failing which, thereafter it will be deposited in their Bank Account
Ex.M29	09.08.2014	Letter sent by the impleaded party's Advocate to President AITUC, informing that amount will be deposited in the Bank account of 29 employees those who have not come forward to collect the money

Ext.M30	16.09.2014	Letter sent by the impleaded party to Mr. Kuppan General Secretary giving further time to 29 employees to collect the settlement gratuity within 10 days failing which the same will be deposited in the Bank Account
Ext.M31	-	Impleaded party (M/s. Sunder & Company) to each of the 29 employees those who have not come forward to collect the settlement dues from the impleaded party
Ext.M32	-	Statement Advance Paid to all the 56 employees
Ext.M33	-	Settlement of ull dues to all the 56 employees
Ext.M34	-	Combined Book Volume I to Volume-III consist of Proof of Payment of Settlement of Gratuity dues to all the 56 employees alongwith the abstract of salary, details of deposit of final settlement of salary & graduity, receipt of payment received on final settlement of salary and gratuity, receipt of PF as on 17.01.2014, bank statement and last salary register.

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2399.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स श्री बजाज आलियांज लाइफ इयोरेंस कम्पनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 111/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-17012/15/2015-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2016

S.O. 2399.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 111/2015) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bajaj Allianz Life Insurance Co. Ltd. and their workman, which was received by the Central Government on 30.11.2016.

[No. L-17012/15/2015-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 28th October, 2016

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 111/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bajaj Allianz Life Insurance Co. Ltd. and their workman)

BETWEEN :

Sri M. Jose : 1st Party/Petitioner

AND

1. The Chief Executive Officer : 2nd Party/1st Respondent
M/s. Bajaj Allianz Life Insurance Co. Ltd.
GE Plaza, Airport Road, Yerawada
Pune-411006

2. The Branch Manager : 2nd Party/2nd Respondent
M/s. Bajaj Allianz Life Insurance Co. Ltd.

Celin Arcade, Distillery Road (No. 26 SBI Road)
Vadsery
Nagarcoil-629001

Appearance :

For the 1st Party/Petitioner : M/s. S. Arunachalam Associates, Advocates
For the 2nd Party/1st & 2nd Respondent : M/s. S. Namasivayam, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-17012/15/2015-IR (M) dated 14.07.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

“Whether the termination of Sri M. Jose by the Management of M/s. Bajaj Allianz Life Insurance Company Ltd. is justifiable or not? If not, to what relief the workman is entitled?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID No. 111/2015 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner joined service of the Respondent on 24.06.2006 as Junior Sales Manager. He was confirmed on the post after completion of probation. The duty of the petitioner as Junior Sales Manager is to promote insurance business by recruiting Insurance Consultants and actively canvassing policies with the assistance of Insurance Consultants. The post of Junior Sales Manager does not involve any supervision or managerial capacity. The petitioner is a workman coming within the definition of Section-2(s) of the Industrial Disputes Act. The petitioner has no subordinates under his control. He has no authority to issue or execute any order or to take any decision. The position of the petitioner as Junior Sales Manager was upgraded to Assistant Sales Manager in the year 2007 and to Executive Sales Manager in the year 2008. He was not issued with any specific orders placing him in different designations, but his allowances and certain perks were raised. The raise in the emoluments were without raising the Basic Pay. The petitioner was performing his duties by putting all his efforts ever since he joined the service of the Respondent. However, the Respondent started to issue warning letters to the petitioner stating that there was shortfall in achieving the target. The petitioner was terminated from service on 14.02.2014 by giving him one month's notice pay. The termination is by way of victimization. The termination was not preceded by any enquiry. The petitioner was not given any opportunity to explain his case before he was terminated from service. The Management did not want the petitioner to continue in service as he was placed in the category with higher emoluments. The petitioner is entitled to be reinstated in service with full backwages, continuity of service and other attendant benefits.

4. The Respondents have filed Counter Statement contending as below:

The petitioner is appointed by the Respondents in managerial capacity. He had administrative and managerial powers. He was responsible to develop insurance business of the Respondent Company. The petitioner was also authorized to recruit Insurance Consultants. The petitioner in his cadre as Executive Sales Manager has been expected to achieve certain amount as target. He has not achieved the amount of sales as expected from him. In spite of multiple warnings the petitioner failed to improve so his service had to be terminated. The allegation in the Claim Statement that the petitioner is a workman coming with the definition of Section-2(s) of the ID Act is not correct. The petitioner has a team of Insurance Consultants working under his guidance and supervision. He is empowered to take decisions on behalf of the Respondent. It is incorrect to state that the termination is the result of victimization. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the allegations in the Counter Statement and reiterating his case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W7.

7. **The points for consideration are:**

- (i) Whether termination of the petitioner by the Respondent is justified?
- (ii) What, if any is the relief to which the petitioner is entitled?

The Points

8. The petitioner who had joined the service of the Respondent with the designation of Junior Sales Manager in the year 2006 was terminated from service in February 2014 on the ground that his performance was not satisfactory. The petitioner has contended in the Claim statement that he was terminated from service without conducting any enquiry and this is against the principles of natural justice. He has further stated in the Claim Statement that in spite of designation such as Junior Sales Manager, Assistant Sales Manager, Executive Sales Manager, etc. he never had any administrative power and his job was not of a managerial capacity. Thus, according to him he was a workman coming under the definition of Section-2(s) of the Industrial Disputes Act.
9. The Respondent has contended in the Counter Statement that the petitioner was bound to achieve certain target of work but he has failed in doing this and he was terminated on account of this. It is also stated by the Respondent that the petitioner was having managerial powers and he was not a workman.
10. Initially the question whether the petitioner was a workman or not has to be considered. There is the evidence given by the petitioner examined as WW1 that in spite of several nomenclatures for his job implying managerial powers he never had any such power and he continued to be a Salesman to procure and canvass insurance policies. He had no subordinate persons under his control. He has stated that Insurance Consultants through whom he seeks co-ordination to develop business are not his subordinates. The Insurance Consultants are not company employees at all. So he had no powers to issue any orders or take any decision regarding them also.
11. It could be seen even from the very contentions in the Counter Statement that the job of the petitioner essentially was to canvass insurance policies and to recruit Insurance Consultants. Exts.W2 to Ext.W4 are the monthly performance review in respect of the petitioner which shows that the Management was concerned only about his canvassing insurance policies to their satisfaction. Ext.M3 (series) are also monthly performance review letters indicating this. The termination of the petitioner from service was on the ground that he failed to achieve the target to the satisfaction of the Respondents.
12. The admission made by MW1 during his cross-examination also would show that the petitioner was only workman in spite of his designations such as Junior Sales Manager, Assistant Sales Manager, Executive Sales Manager, etc. MW1 has stated during his cross-examination that the duty of the petitioner was to canvass policies from the public and recruit consultants. He further admitted that the petitioner has no staff under his control in the Respondent establishment. He also admitted that the petitioner had no power to take any independent decision. He even admitted that the petitioner is a workman. If the nature of the work performed by the petitioner, his position without any decision making power etc. are taken into account it could be seen that the petitioner was only a workman coming under the definition of Section-2(s) of the Industrial Disputes Act.
13. The petitioner was terminated from service admittedly without conducting any enquiry. As seen from Ext.W5, the termination order, the performance of the petitioner has been found unsatisfactory as he has failed to achieve the assigned business targets continuously for three months. It is accordingly he was terminated from service.
14. Exts.W2 to Ext.W4 are the monthly performance review letters issued to the petitioner. Ext.W2 was issued in September 2012. It states that his rating as on 31.08.2012 for the period from 1st April to 31st August, 2012 is “*low performance*”. In Ext.W3 another performance review letter issued in December, 2012 his performance is shown as “*above average*”. In Ext.W4, the performance rating is as “*extremely low*”. Ext.M3 (series) are the monthly performance review letterers marked on the side of the Respondent. These cover the period from June 2013 to December 2013, all showing performance rating such as “*extremely low performance*”, etc.
15. MW1 who is working as Deputy Manager in the Respondent establishment has stated that the petitioner has not achieved the amount of sales as expected from him and that in spite of multiple warnings he failed to improve and this has resulted in his termination. However, the Respondent did not produce any documents to show that any particular business target has been given to the petitioner. None of the performance review letters refer to any particular target but merely states that the performance is low. There is nothing to show that any specified target was given to the petitioner.
16. In fact the target is seen fixed only during the period of probation, as seen from Ext.W1, the Appointment Order. The order states that the person appointed as Junior Sales Manager will be on probation for a period of one year and the period could be extended upto two years. Clause-13 of the Appointment Order states that the duties and obligations of Junior Sales Manager are given in Annexure-A(2). This annexure does not refer to any fixed target. However, Annexure-A(1) refers to business target for Junior Sales Manager on probation. Thus even in the Appointment Order as Junior Sales Manager there is no reference to any fixed target for one who has completed the period of probation.
17. The practice of the company seems to have been to put persons who have done more business in the nomenclature of Sales Manager, Executive Sales Manager, etc. The petitioner had joined in the year 2006 and had been

in position of executive Sales Manager at the time when he was terminated from service. In spite of all the nomenclatures given the petitioner continued to do the same kind of work i.e. canvassing insurance policies and recruitment of Insurance Consultants who will be canvassing policies. In the absence of any document to show that a person in the position of Executive Sales Manager is bound to achieve target, the case put forth by the Respondent in this respect could not be accepted. There was no justification for the Respondent to terminate the service of the petitioner on the ground of low performance.

18. Even as admitted by the respondent there was no enquiry preceding the termination. Exts.W2 to W4 are only performance review letters insisting that the petitioner should achieve the targets. The petitioner was not given any opportunity to explain his case.

19. The petitioner was given one month's salary in lieu of notice. However, he was not given any compensation. Thus the termination is in violation of Section-25(F) of the ID Act. The termination of the petitioner by the Respondent is without any justification. The petitioner is entitled to be reinstated in service.

20. In view of my discussion above, an Award is passed as below:

The Respondent is directed to reinstate the petitioner in service within two months of the publication of the Award with 50% backwages and all attendant benefits. Default in payment of backwages will entail interest @ 7.5% per annum from the date of the Award.

(Dictated to the PA transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th October, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri M. Jose
For the 2nd Party/1st & 2nd Respondents : MW1, Sri S.M. Satheesh

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	26.05.2006	Appointment Order issued to the petitioner
Ext.W2	01.09.2012	On monthly performance review of the petitioner with a warning
Ext.W3	01.12.2012	On monthly performance review of the petitioner with a warning
Ext.W4	02.12.2013	On monthly performance review of the petitioner with a warning
Ext.W5	14.02.2014	Termination order of the petitioner by the Respondent from his service
Ext.W6	31.03.2014	Letter to the Labour Commissioner
Ext.W7	27.02.2015	Letter of the Regional Labour Commissioner

On the Respondent's side

Ex.No.	Date	Description
Ext.M1	26.05.2006	Appointment letter of Junior Sales Manager M. Jose
Ext.M2	29.09.2011	Compensation restricting letter to M. Jose M Maria Louis, Executive Sales Manager
Ext.M3	July 2013 to Jan. 2014	Monthly Performance Review Letters.

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2400.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स यूरेनियम कार्पोरेशन ऑफ इण्डिया लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक

विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 39/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-42011/7/1995-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2016

S.O. 2400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2001) of the Central Government Industrial Tribunal/Labour Court-2, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Uranium Corporation of India Ltd. and their workman, which was received by the Central Government on 30.11.2016.

[No. L-42011/7/1995-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No.2), AT DHANBAD

PRESENT : Shri R.K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

REFERENCE NO 39 OF 2001

PARTIES : The Joint Secretary,
Uranium Kamgar Sangh
PO: Jadugoda, Distt: Singhbhum (E), Jharkhand

Vs.

The Chairman –cum-Managing Director,
Uranium Corp. of India Ltd.,
P.O. Jadugoda Mines-832102 Distt: Singhbhum (E), Jharkhand.

Order No.L-42011/7/95-IR (Misc) dt.nil

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr. P.R. Rakshit, Ld. Advocate

State : Jharkhand

Industry : Mines

Dated, Dhanbad, the 16th Sept., 2016

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. **L-42011/7/95-IR(Misc) . dt.nil**

SCHEDULE

“Whether the demand of the Uranium Kamgar Union for making permanent the services of drivers and operators and designating them as tradesman “C in the scale of pay of Rs.1280-43-1839-59-1957 from the date of their appointment and paying them arrears is justified ?If so, to what relief the workmen are entitled ?”

On receipt of the Order No. **L-42011/7/95-IR (Misc). dt.nil** of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 39 of 2000 was registered on 07.03.2001 and, accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents.

In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned. Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own Ld. Counsels appeared respectively, and contested the case.

2 In the W.S. of the workmen the Union alleged that the Driver and Operators of the Mines have been working at two Units at -Jadugoda and Narwa Pahar under the Management of Uranium Corporation of the India Ltd against the permanent vacancy under director control & supervision of the Management of the UCIL and they had put in 240 days in each calendar year and staked claimed permanency at par with Tradesman since the date of their initial appointment

but the Management denied them. Though they have put in regular and continuous service in each year till the Management of the UCIL with malafide intention to victimize the workmen concerned did not accord the permanent status. Subsequently the issue, on being sponsored by the Union came up before the Management, and then to Conciliation Officer stating therein that they had been performing the job of Drivers & Operators at the behest and to the satisfaction of Management. They discharged duties even at underground Mines and on Surface as well till Management rejected their demand of permanency status and salaries at par with those of the Tradesman. However the issue was referred to the ALC(C),Chaiapas but Management stood by firmly & remained adamant, the case ended as failure of conciliation, resulted in birth of Reference Case. However the during the pendency of the conciliation proceedings the Management accorded status of the permanency to the Drivers and Operator. The Union demanded from the Management for permanent status of Drivers/Operators at par with Tradesman 'C' in the scale of pay mentioned in the order of Reference and arrear thereof on the basis of equal pay equal work as stated in W.S.

3. Brushing aside all the allegations, the Management stated categorically the factual that they had workforce as Drivers/Operators and tradesman etc. in their employment and, their classification are governed by the rules/orders and policy decisions as taken out by the Management Company from time to time. Under the Management of the Uranium Corporation of India (CIL), there have been three Mines namely Jaduguda,/Narwapahar/Bhatin under its fold and uniform policies are enforced spread over three entities in the matter of workforce employment therein and requirements of personnel even their workmen's particulars maintained separately by the respective Units /Mines independently. The Management Corporation is wholly owned by Government of India has not been carrying on any trade or business as envisaged under the ID Act.1947. The Management cannot deviate from or give a go bye to such rules or cause any arbitrariness in all such matters. In fact, the workmen are given employment on casual/temporary basis depending upon the exigencies and requirements. The reference has become in fructuous as all the casual drivers have been absorbed. The Corporation being a Government of India Organization there is no scope for any victimization and/or exploiting, these all mean fomenting Industrial unrest alleged by the workmen. Though the Hon'ble High Court, Ranchi Bench (Single) by upholding the order of the Government declined to give any direction upon the Government nor any direction to make a reference. However, the Hon'ble Division Bench of Patna High Court, Ranchi Bench made a direction to the Government to make reference, as asserted by the Management. So the Management came out with prayer that a No- Dispute Order be passed in view of the dispute does not exist since upon granting permanent status of all Drivers/operators with the prescribed scales and so far, question of putting them in optimum scales and to designate them as Tradesman-C that seems to have no longer any meaning in right prospective.

4. Hearing as scheduled on 5.8.20016 inviting both sides at Jadugoda for taking final decision on the petition dt.09.12.2014. But neither the Union nor their Representative appeared on their behalf nor did take any move to close hearing of evidence and taking a final decision, as the Court already fixed. Whereas they were regularly served with notices for appearance. Mr.P.R.Rakshit, Ld. Advocate along with a team of the Management officials made appearance representing the Management side not for this time, but all along since long. During the course of hearing the fact emerged out from the Management side that the core issue in fact, had already been settled based on Memorandum of Settlement(MOS) arrived at on 18th June,1999 at Jadugoda between the workmen represented by Jadugoda Labour Union, Uranium Kamgar Union and Uranium Mazdoor Sangh and their Management of Uranium Corp of the India Ltd.(UCIL). With this settlement enforced long back in the said Mines, the real issue in schedule need not be dealt with as it has no longer any relevancy with implementation of the Memorandum of Settlement dates back 18.06.1999. The Memorandum of the Settlement will itself form a part of the Award. The industrial dispute does not matter in real sense as of now, with implementation said Memorandum of Settlement(MOS) now exclusively enforced in the said Company after having arrived at settlement in wake of discussions and deliberations, at length amongst the Management and the four Unions Representatives.

The extract of the Memorandum of Settlement is as follow:

FORM-H, (Rule-58)

MEMORANDUM OF SETTLEMENT ARRIVED AT ON 18-06-1999 AT JADUGUDA BETWEEN THE MANAGEMENT OF URANIUM CORPORATION OF INDIA LIMITED AND THEIR WORKMEN REPRESENTED BY JADUGUDA LABOUR UNION (INTUC), URANIUM KAMGAR UNION (IFTU), URANIUM MAZDOOR SANGH (BMS) AND SINGHBHUM URANIUM MAZDOOR UNION (JMM)

	ON BEHALF OF MANAGEMENT		ON BEHALF OF WORKMEN
1.	Shri J.L.Bhasin, Chairman & MD		JADUGUDA LABOUR UNION
2.	Shri R.P.Sengupta, GM (Mech) Project	1.	Shri B.N.Choudhary, Gen.Secy
3.	Shri K.Maheli, Chief Manager (P&A)	2.	Shri Bameshwar Singh, Asstt.Secy

4.	Shri D.Acharya,Chief Supdt.(Mines)NWP	3.	Shri B.D.Prasad,Asstt.Secy.
5.	Shri A.K.Sinha,Manager (P&A)	4.	Shri Jayasheelan,Exec.Committee Mem.
6.	Shri A.K.Sinha,Supdt.(Maint.Tpt)	5.	Shri M.C.Das,Exec.Committee Member.
7.	Sri Pranab Roy,Dy.Supdt (Indl.Engg).		
8.	Sri C.P.Verma,Addl.Manager (PERS)		JADUGUDA KAMGAR UNION
		1	Md.Massood,Orgn.Secy.
			UNANIUM MAZDOOR SANGH
		1.	Shri Ram Naresh Kumar,Gen.Secy
		2.	Shri Raj Kr.Bhakat, Working President
			SINGHBHUM MAZDOOR UNION
		1.	Shri H.P.Mahato,Asstt.Secy
		2.	Shri K.K.Mahato,Treasurer

Short Recital of the case

Proper grade of Drivers who were engaged in driving underground equipments like Service Transprt, LHD, LPDT and Motor Grader was under consideration for sometime past. A proposal was put up to all the Unions on 4.10.1996 which was subsequently discussed a number of times but could not be finalized. Now after lot of protracted discussions between the Management and all the Unions, the following is agreed to:-

Terms of Settlement

1. It is agreed that all the Drivers who are engaged in driving underground equipments as mentioned above will be designated as Driver (SLLM)-‘A’ after their regularization.
2. After putting in one year of satisfactory service as Driver (SLLM)-A, such Drivers will be promoted to the next higher grade of Driver (SLLM)’B’.
3. It is also agreed that Drivers engaged as Driver (SLLM)-‘B’ would be promoted further as Driver (SLLM)-C’ after putting in 3(three) years of satisfactory service as Driver (SLLM)-B’
4. It is also agreed that their further promotion will be as per normal channel of promotion.
5. The promotion for one grade to next higher grade will be dependent on satisfactory attendance in the preceding year and in case of Driver (SLLM) is having 75 days absenteeism in a year, his case will be reviewed next year.
6. It is further agreed that all the above promotions will be effective from the date of their deployment in underground work and they continue to do the job in underground without any break.
7. It is also agreed that promotions will be considered in case a Driver (SLLM) is rehabilitated.
8. It is also agreed that in future no Driver (SLLM) will be transferred to Surface duty unless he is declared rehabilitated as per the Company’s existing practice.
9. The arrear payment arising out of the above Agreement will be made within three months of signing of this Agreement.
10. The above agreement would be applicable to only those Driver (SLLM) who are working in this trade as on the date of signing of the Agreement.
11. The Union expressed that the above workers be designated as Operators (SLLM) but the Management did not agrees as similar designations are prevalent in Jaduguda and Bhatin mines.

Representative Management

Sd/

1 Illegible Signatures of various Management Officials Sd/1
Representatives

Representative Workmen

Sd/

Illegible Signatures of various workmen
Representatives

Place : Jaduguda Mines

Witness

Sd/-

Dated : 18th June 1999

(S.K.Banerjee)

Sr.Secratarial Officer

Sd/-

(L.K.Modak)

Helper-C

Thus an Award based on 'Memorandum of Settlement' (MOS) already enforced in the said Mines in toto, is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2401.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स युसूफ एण्ड ब्रदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 39/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-29011/7/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2016

S.O. 2401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2014) of the Central Government Industrial Tribunal/Labour Court-2, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Yusuf & Brothers and their workman, which was received by the Central Government on 30.11.2016.

[No. L-29011/7/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No.2), AT DHANBAD****PRESENT :** Shri R.K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

REFERENCE NO. 39 OF 2014

PARTIES : The Gen. Secretary,
Manglahat Khadan Mazdoor Sangh,
Rajmahal Head Office, PO & Distt: Pakur

Vs.

M/s. Yusuf & Brothers,
J.K. Mines,
Block -B, Rajmahal,
Sahibganj, Jharkhand, Sahibganj (Jharkhand).

Order No. L-29011/7/2014-IR (M) dt.08.07.2014**APPEARANCES :**

On behalf of the workman/Union : None

On behalf of the Management : None

State : Jharkhand

Industry : Mines

Dated, Dhanbad, the 25th July, 2016

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. **L-29011/7/2014-IR (M) dtd. 08.07.2014.**

SCHEDULE

“Whether the demand of Rourkela Shramik Sangh to provide compassionate employment to Sri Bijay Kumar Mahapatra on the death of his father late Budhnath Mahapatra who died due to stress taken during employment is justified and proper? If yes, to what relief he is entitled to get from the Rourkela Steel Plant?”

2. Neither the Sponsoring Union/petitioner nor Representative from the Management is reported to be present on date despite sending notice dtd.14.8.2014 to the both litigant parties at the addresses referred in order of the Reference itself ever since its inception and subsequently coming into existence as ID bearing No. 39 of 2014. The case deals with providing employment to workman's son on compassionate ground in the Rourkela Steel Plant. Though Notice dtd. 14th August, 2014 had been sent both the litigant parties on the addresses referred in the Order of the Reference itself that remained unresponsive. The case has been hanging over filing W.S. on the part of the workman for over more than one and half year with posting of hearings and adjournments. Significantly it fell flat even unfolding at the very beginning.

From perusal of the records concerned, it points out clearly that since inception not even a single step is reported to have been moved forward nor has it been even offered any cogent reasons for unprecedented delay especially on the part of the workman. The workman/petitioner do not seem to be in hurry to proceed the case through adjudication nor do they have least interested to even file WS in spite of so much opportunities provided. The workman miserably failed to appear or file the long awaited W.S, lying pending since long back. The conduct and gesture, the workman walks, convinces of no use dragging further due to disinterestedness of the workman side and, against the natural justice. Under the circumstances, the case is wrapped up as No Industrial Dispute between the parties concerned in real sense. Accordingly an Award of 'No Dispute Award' is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2402.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 13/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-30011/83/2006-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2016

S.O. 2402.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2008) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BPCL and their workman, which was received by the Central Government on 30.11.2016.

[No. L-30011/83/2006-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.1, DHANBAD**

In the matter of reference U/s 10 (1) (d) (2A) of I.D.Act. 1947.

Reference: No.13/2008

Employers in relation to the management of M/s. BPCL

AND

Their workmen

Present : Shri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers : Shri V.K.Pandey, Advocate

For the workman : Shri R.R.Ram, Rep

State : Jharkhand

Industry : Petroleum

Dated- 21/10/2016

AWARD

By Order No. L-30011/83/2006-IR (M) dated 13/03/2008, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of BPCL, Tatanagar Depot in terminating the service of Shri Peter Paul Topno H/V Driver and in not regularising the service of S/Shri Bikram Hembram, Mani Ram Baskey General Operator inspite of increase in workload with induction of larger capacity Tanklorry (18 KL in place of 12KL) and in view of the job reportedly being of perennial nature is justified?”

2. The case is received from the Ministry of Labour on 26.03.2008. After receipt of reference, both Parties are noticed, The sponsoring Union files their written statement on 30.01.2009. After long delay the management also files their written statement-cum-rejoinder on 03.03.2011. Three witnessess adduced on behalf of the workman and two witnessess examined on behalf of the management. Documents of the workman is marked as W-1 to W- 8/1 and one document also marked by the management as M-1 series. & M-2.
3. The case of the workman is that the Company sent their requisition to National Employment Exchange who sponsore some names to fill up some Casual vacancies in the category of General workmen , Casual and Heavy Vehicle Driver at Tata Nagar Depot. On the basis of said requisition , the National Employment Exchange has sponsored the names of some candidates including the name of all three workmen of this case. All workmen were appeared for written test and subsequently appeared for interview on 3rd Oct. 1989 vide letter dated 20.09.1989.
4. It is further submitted by the workman that all workmen were successful in the written examination , interview, Driving Test and Medical Test and subsequently asked to report in the Tata Nagar Depot vide letter No. TATA/CON/ dated 20.11.1989 and they were working under the said Depot for more than 12 years continously before the termination but the company have not absorbed them as permanent employee. On the contrary the management has terminated the workmen without any notice.
5. It is also submitted by the workman that the workman has been discriminated in as much as some other casual workmen who joined alongwith the workman concerned has since been absorbed by the company in other location but they were discriminated hence industrial dispute arose.
6. On the other hand the case of the management is that The prevalent practice in the whole oil Industry with regard to engagement of casual is laws followed in the BPCL. The standing order of the BPCL permits to engage casual Labour on daily basis against absenteeism of permanent workmen. When a permanent workmen becomes absent casual labour requires to be engaged to help continuity in work which have been hampered by sudden absence of any permanent workman.
7. It is further submitted by the management that for the purpose of engagement of casual workman there is a system for empanelment of casual labour of panel. Their names are sponsored by the office of the concerned employment Exchange. The sponsored names are not automatically entered into the book of casual but through a selection process their names are empanelled for a particular job and their engagement are made as and when the same is required due to sudden absenteeism of permanent workman. Such engagement however does not confer any right upon the casual to be treated as permanent.
8. It is also submitted by the management that the process of engagement of casual is not only followed in BPCL but also is prevailing in the whole oil Industry and it is a common practice through out the Country. In the above circumstances the question of appointment of any casual or termination of services does not arise at all.
9. The company obtained sponsorship from the said employment exchange in 1989 for the post of two casual general workmen and one casual heavy vehicle driver purely on need basis . The disputant workmen were engaged for the Tata Nagar Depot on casual basis and their engagement was never on regular basis but on intermittent period if permanent workman went on leave, and just to keep continuity in work they were engaged on those occasion.
10. The fact remains that under no circumstances such necessity occurred for more than 160 days or little more under exceptional circumstances in any particular year i.e much below the 240 days in any calendar year.

11. The short point to be decided in this reference whether the workman who have been denied to work under the management will be reemployed under the management or not.

12. The admitted fact of the parties are that the workmen taken through employment exchange, after due interview and physical fitness, and engaged by the management as casual employees i.e their services utilised as and when required. From the documents it appear that the workman have been engaged by the management. But on close scrutiny, it is not found that the workman completed 240 days in any calendar years, from the date of their engagement. But they have been serving in the corporation about 14-15 years without any lapses or any misconduct.

13. But it also persued that workman are also not proved their 240 days attendance nor they say in their evidence. Therefore this Tribunal unable to give any relief to them for engagement.

14. But the management ought to take their services as and when required as they were taking previously . The management should not bear grudge, as to why the concerned workmen raised dispute. Hence all the workman be engaged as they were rendering service to the management to save from starvation and when a regular post occurs or any one retire the workmen concerned be engaged as regular employee.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2403.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स केरला मिनरलस एण्ड मेटल लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 32/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-29011/22/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2016

S.O. 2403.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2013) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Kerla Minerals & Metals Ltd. and their workman, which was received by the Central Government on 30.11.2016.

[No. L-29011/22/2013-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri. K. Sasidharan, B. Sc., LLB, Presiding Officer

(Friday the 30th day of September, 2016/08th Asvina, 1938)

ID No. 32/2013

Union	:	The General Secretary, Kerala Minerals & Metals Employees Organization, Chavara – 691583, Kollam. (ex-parte)
Additional Party	:	Shri Sivankutty Nair. K, Visakh, Near Milk Society Ltd., Thamarakulam P O, Alapuzha, Kerala – 690530 (Impleaded vide Order dated 10.03.2016 in IA No.165/2015) (in person)

Management : The Managing Director,
M/s. Kerala Minerals & Metals Ltd.,
Sankaramangalam,
Chavara – 691583.

By M/s. B. S. Krishnan, Associates

This case coming up for final hearing on 31.08.2016 and this Tribunal-cum-Labour Court on 30.09.2016 passed the following:

AWARD

This is a reference made under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947(14 of 1947).

2. The dispute referred for adjudication before this Tribunal is:

“Whether the action of the management of the Kerala Minerals and Metals Ltd., in dismissing Shri Sivankutty Nair K. from service for the alleged misconduct, w.e.f.07.07.2011 is correct? If not, what relief he is entitled to get?”

3. After the receipt of reference Order No.L-29011/22/2013-IR(M) dated 18.06.2013, issued by the Ministry of Labour, Government of India, summons was issued to the parties to appear, submit their pleadings and produce documents to substantiate their respective contentions.

4. On receipt of the summons the parties entered appearance through counsel and submitted their pleadings.

5. The contentions in the claim statement filed by the union in brief are as follows:-

The workman involved in this reference Shri Sivankutty Nair K. was originally appointed as Accountant Grade II on 19.06.1985 in the Titanium Dioxide Pigment unit of the management company. Subsequently he was promoted as Accountant Grade I and later as Senior Grade Accountant. He is a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947. He had unblemished service of more than 26 years under the management.

6. With effect from 15.05.2006, the workman was in charge of Project Accounts and miscellaneous bills in the management company. As per the letter of award No.01/51/1073/PKG-064A dated 22.03.2006, the management company entered into a contract with M/s. Oriental Manufactures Pvt. Ltd., Gujarat for executing the work of engineering procurement, manufacturing, supply, transportation, fabrication, etc. for a total contract price of ₹3,00,12,012/- and an order to that was issued on the same day. As per Clause 5.1.1 of the contract, the management company obtained two bank guarantees from Bank of India, Ahmedabad branch for ₹57,37,366/- against interest free advance of an equal amount to be paid by the management company to the contractor and another bank guarantee for ₹15,00,600/- towards security deposit for due performance of the contract. As per clause 4 of the work order the contract period was 12 months from 22.03.2006.

7. The term of contract ought to have been completed on or before 22.03.2007. Either side failed to comply the contractual obligations within the stipulated period. The Board Directors of the management company resolved to abandon the project in its 187th meeting held on 07.03.2008. Thereafter, the management issued stop memo to the contractor on 27.03.2008 and it was approved by the Government of Kerala as per G.O.(MS) No.168/2010/ID dated 03.08.2010. Even after the abandonment of the project; the bank guarantee executed by the contractor was renewed from time to time for a period of thirty months. The workman who was in charge of retaining the bank guarantee register reminded the officials of the management company about the necessity for timely renewal of bank guarantee and accordingly it was renewed at the instance of the Assistant General Manager(Finance) and the Manager Accounts.

8. The bank guarantee in relation to Chlorinator Phase II and Phase III was due to expire on 30.08.2010. Due to an inadvertent omission/human error occurred in the computer, the due date for the renewal of the bank guarantee was noted as 30.09.2010. This aspect was intimated to the superior officers as per office note dated 13.09.2010. The superior officers failed to rectify the error. When the request for renewal was made to the Bank of India, Ahmedabad branch, they declined to renew the same for the reason that the bank guarantee had expired one month prior to the date of request for renewal. It was the Assistant General Manager (Finance) who is solely responsible for the failure to renew the bank guarantee in time.

9. When the bank failed to renew the bank guarantee, disciplinary proceedings were initiated against the workman and one Shri. Raveendran, Accounts Officer. The management company placed the workman under suspension w.e.f.01.10.2010 pending enquiry. A memo of charge dated 06.10.2010 was served on the workman to explain the reason for causing loss to a tune of more than ₹72,37,966/- and thereby charges were framed against him for:

a. *Damage to the company's properties (clause XXX(1)4 of the standing orders.*

b. *Dishonesty in connection with the company's benefits and business Clause XXX(1)5*

c. *Non-observance of the duties and obligations during the working hours (clause XXXI 65 r/w.Clause 19(2).*

10. The workman submitted his explanation on 11.10.2010 and thereafter his suspension was revoked without prejudice to the initiation of the disciplinary proceedings/domestic enquiry and decision thereon.

11. The management appointed Shri. A. Sudheer Bose, Advocate to conduct domestic enquiry in relation to the charges levelled against the workman. The enquiry officer submitted report with the finding that the workman is guilty of the charges levelled against him. The enquiry was conducted without following the principles of natural justice and without affording fair and reasonable opportunity to the workman to substantiate his contentions. On receipt of the enquiry report the disciplinary authority served a copy of the same, called for submissions from the workman and thereafter passed an order dismissing the workman from service with immediate effect, treating the suspension period as absence from duty and without wages and allowances. Thereafter the management issued another order reserving their right to realize the sum of ₹72,37,966/- from the workman. Subsequently they issued an order forfeiting the gratuity amount payable to the workman to compensate the loss to the company.

12. Thereafter the workman submitted an appeal before the Board of Directors of the management company which also ended in dismissal. The union had agitated the matter before the competent authority for adjudication of the dispute between the management and the workman. In the meantime the workman preferred ID No. 28/2013 for the redressal of his grievance after exhausting remedy before the conciliation officer.

13. The union has stated that the action of the management is illegal, unjust and against the principles of natural justice and fair play. Therefore the union has requested to set aside the dismissal order and the order for recovery of amount from the workman and to reinstate him with all benefits.

14. The averments in the written statement filed by the management in brief are as follows:-

The management has denied all the averments in the claim statement filed by the union except those that are specifically admitted. The workman involved in this reference will not come under the purview of Section 2(s) of the Industrial Disputes Act, 1947. The management company through its consultant MECON, invited tender for the purpose of engineering, procurement, manufacturing, supply, transportation, fabrication, unloading of the material at site, erection, storage, site fabrication etc. for testing and commissioning Chlorinators for the company at Kollam. M/s. Oriental Manufacturers Ltd (Contractor) having Head Office at Vadodara, Gujarat was assigned the work to be executed for the management company. On 22.03.2006 the management company issued letter of award and work order to the contractor. The contract value was ₹3,00,12,012/-. As per clause 5.1.1 of the work order the management has to pay an amount equal to 20% of the contract value i.e., ₹57,37,366/- as advance payment against the bank guarantees to be furnished by the contractor. So also the contractor should furnish bank guarantee to a tune of 5% of the total contract price towards security deposit. On furnishing the bank guarantees, the management paid a sum of ₹57,37,366/- to M/s. Oriental Manufacturers Ltd. as advance payment. As per the stipulations in the contract, the work has to be executed within eight months from the date of the letter of acceptance. As per G O (MS) No.15/2008/ID dated 25.01.2008 the Government decided to cancel the major expansion project and thereby the contract became frustrated. As requested by the management company the bank guarantee furnished by the contractor was renewed from time to time and it was not renewed after 30.08.2010. The non-renewal of bank guarantee furnished by the contractor was due to the fault on the part of the workman. The workman was bound to ensure timely renewal of the bank guarantee and thereby the management suffered loss to a tune of ₹57,37,366/- paid as advance against the bank guarantee and also ₹15,00,600/- furnished as security deposit. The workman was responsible for the loss occasioned to the management company for the failure on his part to renew the bank guarantee in time.

15. The management called for explanation from the workman and his explanation was not satisfactory and hence ordered domestic enquiry by appointing an enquiry officer who conducted the enquiry after affording reasonable and fair opportunity to the workman to substantiate his contentions. The enquiry officer conducted a joint domestic enquiry against the workman and one Shri. K. Raveendran, Accounts Officer. The enquiry officer submitted report on 17.12.2010 with the finding that the workman is responsible for the non-renewal of bank guarantees and his act constitutes misconduct of negligence in performance of duty and thereby causing loss to the management company which is accountable to the Government for such a huge loss.

16. On receipt of the enquiry report, the management complied all the statutory requirements and thereafter issued an order with the proposed punishment. The workman made his submissions and thereafter the disciplinary authority passed an order terminating the workman from services. The appellate authority also considered the submissions made by the workman and disposed the appeal. The contention of the workman that he is not responsible for the renewal of bank guarantees is false and incorrect. The management has stated that the company decided to release the terminal benefits due to the workman on humanitarian grounds. The management has requested to consider the validity of the domestic enquiry as a preliminary point and sought permission to adduce evidence and prove the charges against the workman. They have requested to uphold their contentions.

17. After filing written statement by the management, the union filed rejoinder reiterating the contentions in the claim statement.

18. When the matter was posted for preliminary enquiry, the learned counsel for the union relinquished the vakalath. Subsequently the union was called absent and set ex-parte. Thereafter the workman appeared in person and at his request, as per the order in IA 165/2015 dated 10.03.2016; he was added as an additional party to this reference. Thereafter the workman filed a separate claim statement reiterating the contentions in the claim statement filed by the union. The management also filed additional written statement reaffirming their stand in the written statement filed earlier.

19. Thereafter opportunity was afforded to the parties to take steps. The management produced enquiry file and examined the enquiry officer as MW1 and the enquiry file was marked as Ext.M1.

20. The validity of the domestic enquiry was considered as the preliminary point. As per the Preliminary Order dated 23.06.2016 the domestic enquiry conducted by the management in relation to the charges levelled against the workman was found to be valid, just and proper. Thereafter opportunity was afforded to the parties to make their submissions. The workman appeared in person and argued his case vehemently. The learned counsel appearing for the management made submissions and the matter was heard in detail.

21. The points arising for consideration are:-

“(i) Whether the action of the management of the Kerala Minerals and Metals Ltd. in dismissing Shri K. Sivankutty Nair from their service for the alleged misconduct w.e.f.07.07.2011 is correct?

(ii) To what relief the workman is entitled?”

22. Point No.(i):- The workman involved in this reference, Shri Sivankutty Nair. K. was initially appointed as Accountant Grade II in the Titanium Dioxide Pigment unit of the management company w.e.f.19.06.1985. Subsequently he was promoted as Accountant Grade I and later as - Senior Grade Accountant. The workman was in charge of Project Accounts and miscellaneous bills in favour of the company w.e.f.15.05.2006, for the various works undertaken by the company. Admittedly the management company entered into a contract with one M/s.Oriental Manufacturers Pvt. Ltd., Gujarat (contractor) for the purpose of executing the work as per the office letter of award No.01/51/1073/PKG-064A dated 22.03.2006 and work order No.01-51-1073/Pkg-64A dated 22.03.2006 was issued. In accordance with the stipulations under clause 5.1.1 of the contract, the management company obtained two bank guarantees from Bank of India, Ahmedabad branch issued at the instance of the contractor, for ₹57,37,366/- against interest free advance amount to be paid by the company to the contractor and another bank guarantee for ₹15,00,600/- towards security deposit for due performance of the contract. It is stated that as part of the obligation on the part of the management company they released a sum of ₹57,37,366/- to the contractor on the strength of the bank guarantee furnished by them. It is stated that the bank guarantee produced by the contractor was renewed from time to time.

23. In the meantime the management company abandoned the project and a letter to that effect was issued to the contractor with the approval of the Government of Kerala. Even after that the bank guarantee was renewed from time to time for the reason that there was advance payment by the management to the contractor. The workman involved in this reference has stated that the bank guarantee in relation to Chlorinator Phase-II and Phase III was due to expire on 30.08.2010 and an inadvertent omission/human error occurred. As a result the due date for the renewal of bank guarantee was noted as 30.09.2010 in the computer. Subsequently, the management as per note dated 13.09.2010 requested the bank for renewal of the bank guarantee and the request was declined by the bank for the reason that the term of bank guarantee expired on 30.08.2010.

24. Thereafter the management initiated disciplinary proceedings against the workman and one Shri. Raveendran, Accounts Officer. The management called for explanation from the concerned persons. According to the management the explanation submitted by the workman was not satisfactory and hence they ordered domestic enquiry by appointing an enquiry officer. The enquiry officer conducted the enquiry against the workman and Shri. Raveendran jointly and submitted report with the finding, that the workman is guilty of the misconduct alleged. The management has stated that the disciplinary authority complied all the statutory requirements and issued an order of dismissal of the workman from service without prejudice to their right to realize the sum of ₹72,37,966/- being the loss occasioned to the company on account of lapses/negligence/ misconduct on the part of the workman.

25. The workman has stated that he is not responsible for the non-renewal of the bank guarantee in time. He has stated that the Assistant General Manager(Finance) is solely responsible for the timely renewal of bank guarantee and hence he shall not be proceeded even if there is any misconduct on his part.

26. The management has stated that it was the duty and responsibility of the workman to renew the bank guarantees in time and his failure to do so occasioned loss to a tune of ₹57,37,366/- and ₹15,00,600/- to the management company. The management has further stated that the abandonment of the project and the reason for the abandonment by the management company and decision to that effect by the Government of Kerala has nothing to do with the inaction on

the part of the workman to renew the bank guarantees in time. They have stated that the workman is responsible for the misconduct alleged against him and thereby caused huge loss to the company.

27. At the time of hearing the workman appeared in person and submitted that he is not responsible for the timely renewal of the bank guarantee and that he shall not be proceeded for the non-renewal of bank guarantees in time. The learned counsel for the management submitted that the workman is responsible for the timely renewal of the bank guarantee. It is stated that failure on the part of the workman to renew the bank guarantee in time occasioned loss to the management company.

28. At the stage of preliminary enquiry the workman cross-examined the enquiry officer (MW1) at length. MW1 has stated that as per Exts.D3 and D5 documents marked in the enquiry, it is the responsibility of the workman who is the senior accountant in the company to renew the bank guarantee in time.

29. On going through the documents marked in the domestic enquiry as revealed from Ext.M1 enquiry file, it is seen that it was the responsibility of the workman to take appropriate steps at the relevant time to renew the bank guarantees especially for the reason that the management company had already advanced the sum of ₹57,37,366/- to the contractor on the strength of the bank guarantee furnished by them. The workman cannot put the blame on the Assistant General Manager(Finance) and evade the responsibility for the reason that the management had abandoned the project. It is seen that during the domestic enquiry the workman cross-examined the management witness. The workman has produced documents which are marked as Exts.D1 to D5 in the enquiry. From the documents marked in the enquiry and the evidence adduced it is clear that the workman was solely responsible for the timely renewal of the bank guarantee and his failure to perform duty occasioned considerable loss to the management company. In such circumstance the decision of the management to dismiss him from services of the management w.e.f.07.07.2011 cannot be said to be unjust; or disproportionate to the gravity of the misconduct. Therefore the point for consideration is answered against the workman.

30. Point No.(ii):- In view of the finding on Point No.(i), the workman is not entitled to any of the relief claimed as per this reference. Point No.(ii) is answered accordingly.

31. In the result an award is passed holding that the action of the management of Kerala Minerals and Metals Ltd. in dismissing Shri. Sivankutty Nair. K, from their service for the alleged misconduct w.e.f.07.07.2011 is just, correct and proper.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30th day of September, 2016.

SASIDHARAN K., Presiding Officer

APPENDIX

Witness for the workman

NIL

Witness for the management

MW1 23.12.2015

Advocate Shri. A. Sudheer Bose

Exhibit for the workman

NIL

Exhibit for the management

M1

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Enquiry File

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2404.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स द हुट्टी गोल्ड माइन्स कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 43/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-43011/12/2012-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2016

S.O. 2404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2012) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the

management of M/s. The Hutti Gold Mines Co. Limited and their workman, which was received by the Central Government on 30.11.2016.

[No. L-43011/12/2012-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 15th NOVEMBER 2016

PRESENT : Shri V S RAVI, Presiding Officer

C R No. 43/2012

I Party

Shri Wale Babu,
The Ex-General Secretary,
HGM Staff & Employees Union,
Hutti PO,
Raichur District.

II Party

The Executive Director,
The Hutti Gold Mines Co. Limited,
Hutti - 584115
Raichur District.

AWARD

1. The Central Government vide Order No.L-43011/12/2012-IR(M) dated 21.09.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the action of the management of M/s. Hutti Gold Mines Co. Limited (HGML) in not paying the arrears from 01.04.2006 in terms of settlement dated 03.05.2007 is legal and justified? If not, to what relief the concerned workmen are entitled to?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the I party and I party also called absent. In fact, notice of hearings have been sent to the I party by RPAD through the Department of Posts, India and also acknowledgment received regarding the receipt of the notice by the I Party. Still, no representation has been made on behalf of I party and also, I party is called, absent.

3. On perusal of records already notices have been sent and, the said notices have been served to both the parties and the RPAD acknowledgment cards have been received by this Tribunal. Hence, it is found that inspite of giving sufficient and adequate chances by issuing notices of hearing to I party, the I party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the I party has no interest to contest the present matter, inspite of the service of notices of hearing to the I party. It is for the I party to make out a case that I party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Further, on behalf of the 2nd party, M R C Ravi Advocate of the 2nd Party, reported that the 2nd party has not violated any provisions of the Rules and also, already granted all the legitimate benefits to the I party and also, as per the provisions of law, the relevant benefits have been granted by the 2nd Party. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of materials available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non-prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the I party by way of RPAD and the conduct of I Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it is to be held that the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

AWARD

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 15th November, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2405.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 45/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.11.2016 को प्राप्त हुआ था।

[सं. एल-30015/3/2005-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 5th December, 2016

S.O. 2405.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2005) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 30.11.2016.

[No. L-30015/3/2005-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No.2, MUMBAI****PRESENT : M.V. DESHPANDE**, Presiding Officer**REFERENCE No.CGIT-2/45 of 2005****EMPLOYERS IN RELATION TO THE MANAGEMENT OF
HINDUSTAN PETROLEUM CORPORATION LTD.**

The Chairman & Managing Director
Hindustan Petroleum Corporation Ltd.
Ballard Estate
Mumbai 400 038.

AND**THEIR WORKMAN**

Mumbai ShramikSangh
Sangursh, Quarry Road
Bhandup (W)
Mumbai 400 078.

Shri Mahesh M. Bhosale & 14 Ors.
C/o. Babu Sadashiv Shetty
Shastri Nagar, Vasinaka R.C. Marg
Chembur, Mumbai 400 074

APPEARANCES:

FOR THE EMPLOYER : Mr. L.L. D'Souza, Representative.

FOR THE WORKMEN : Mr. Umesh Nabar, Advocate.

Mumbai, dated the 3rd October, 2016.**AWARD**

The Government of India, Ministry of Labour & Employment by its Order No.L-30015/3/2005-IR (M), dated 13.01.2005 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the contract between the contractor and the HPCL is sham and bogus and is a camouflage to deprive the workmen whose names are enlisted at Exhibit ‘A’ from the benefits available to permanent workers of the HPCL?”

“Whether the workmen whose names are enlisted at Exhibit ‘A’ should be declared as permanent workers and wages and consequential benefits be paid to them”

Annexure A

Name of the workers:

1. Mahesh M. Bhosale
2. Dhanaji Y. Kokare
3. Jamil Y. Shaikh
4. Moreshwar A. Patil
5. Hansbahadur Naval Singh
6. Jasim Husain Mulla
7. Sahebrao Patil
8. Sanjay S. Nikalje
9. Vijay S. Nikalje
10. Tatoba K. Kamble
11. Balasaheb B. Thorat
12. Dadasaheb B. Jare
13. Sudhir P. Shinde
14. Ramakant P. Gawale
15. Babu S. Shetty

2. After restoration of the Reference on 23/02/2012, evidence of Workman witness was recorded and the matter was fixed for cross-examination of workman witness-2. Today the 14 concerned workmen represented by Mr. UmeshNabar and Representative of Management, Mr. L.L.D’Souza filed Consent Terms (Ex-38) and prayed to dispose of the Reference as the dispute is settled amicably out of court. Orders were passed on Ex-38. Accordingly I pass the following order:

ORDER

In view of consent terms (Ex-38), Reference stands dismissed.

Date: 03.10.2016

M. V. DESHPANDE, Presiding Officer

Ex. -38

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

REFERENCE CGIT II 45 OF 2005

Chairman & Managing Director,

Hindustan Petroleum & Corporation Ltd.

...First Party

V/s.

Shri Mahesh M. Bhosale & 14 Others

...Second Party

CONSENT TERMS

1. It is submitted that the parties to the above Reference i.e. First Party M/s. Hindustan Petroleum Corporation Limited and Second Party i.e. Mahesh M. Bhosale & 13 Others, have arrived at an amicable Out of Court Settlement. A detailed list of 14 contract workmen who have entered into Out of Court Settlement with the First Party is detailed in Attachment- 1 of the said MOU i.e. Out of Court Settlement dated 23/09/2016. A copy of Out of Court Settlement, is annexed hereto and marked as Exhibit-I.

2. It is submitted that though the First Party had no Employer-Employee nexus or relationship with Second Party Contract workmen and thus First Party was not liable under any law, in any respect to provide work and payment of any compensation to them. However, in order to amicably resolve the present dispute expeditiously, the said Out of Court Settlement has been signed between said contract workmen and the First Party on following terms:

- a) It has been agreed that the First Party would continue the services of concerned contract workmen through contractor(s) for performing the contractual obligation at its Establishment at HP Nagar Housing Complex (East & West), Mumbai, till attaining the age of their superannuation i.e. 60 years, save and except misconduct.
- b) It has been agreed that the First. Party after adhering to the purchase procedures of the Corporation would appoint independent contractors and would specify in the tender conditions the mutually agreed terms for continuation of the said contract workmen under the respective contractors at its Establishment at HP Nagar Housing Complex (East & West), Mumbai, for performing the contractual obligations as detailed in the Memorandum of Understanding for Out of Court Settlement.
- c) It has been agreed that the Second Party Contract workmen, would withdraw their claim of regularization raised in instant reference case pending before this Hon'ble Industrial Tribunal and also agreed to relinquish their claim of regularization and wages at par with regular workmen.
- d) It has been agreed that in the event of indiscipline or misbehavior or any misconduct committed by said contract workmen, the respective contractor engaged at the relevant point of time, would have the right to take disciplinary action including discontinuation of these workmen, after adhering to due process of law.
- e) It has been agreed that said contract workmen would be paid an additional fixed allowance of Rs. 7020/- p.m. over and above the applicable minimum wages payable in their respective category by the concerned Contractors. The aforesaid fixed allowance would be revised on 1st January of each calendar year and incremental revision @ 3% of such additional allowance paid as of 31 December of the previous calendar year, would be paid to the contract workmen which would be deemed to be the revised fixed additional allowance for the particular calendar year, subject to minimum attendance of 180 days during the preceding year.
- f) It has been agreed that irrespective of the fact of the respective contractors may be having their independent code under PF, the contribution in respect of said contract workmen would be deposited through the Corporations separate code allotted for the contract labourers engaged across Corporations locations.
- g) It has been agreed that consequent to the additional fixed allowance of Rs. 7,020/- per month, the said contract workmen would be entitled to receive applicable bonus amount @ 8.33% of actual wages, irrespective of the fact that the gross wage exceeds Rs. 21,000/- per month or the limit as declared by the Appropriate Authority under Payment of Bonus Act, 1965 from time to time.
- h) It has been agreed that since consequent to the payment of additional fixed allowance of Rs. 7020/- per month over & above the applicable minimum wages, the contract workmen would not be entitled for coverage under ESI Act, a comprehensive Workmen Compensation Policy as well as Medical Insurance Policy would be taken by the Corporation as a Principal Employer on behalf of these workmen for covering them along with their dependent family members (dependent parents, spouse & children) whereby the Contractor, as the Employer would contribute an amount equivalent to 4.75% of the wages payable to these workmen and the workmen would contribute 1.75% of their wages which would be deducted from the wages payable to the workmen towards coverage under Comprehensive Medical Insurance Scheme. It has been agreed that till the time such comprehensive insurance policy is being undertaken by the Corporation as the Principal Employer, the contract workmen would continue to be covered under the Employees State Insurance Act and remittance to that effect would be made by the concerned Contractors.
- i) It has been agreed that upon attaining the age of superannuation (60 year), the applicable gratuity, would be disbursed to the respective contract workmen, for their services through various contractors in the Corporation's location. It is submitted that for the purpose of calculating gratuity, the date of joining the services would be reckoned effective the date of filing of the Writ Petition No. 942 of 1998 as detailed in Attachment- 1 of the said MOU i.e. Out of Court Settlement.
- j) It has been agreed by Second Party contract workmen that in future no dispute / claim / demand of whatsoever nature, monetary or non-monetary, shall be raised by them before any Court of law under issue of permanency / regularization in the services of the First Party.

- k) It has been agreed that said Second Party contract workmen agree and undertake to irretrievably forgo their claim for regularization / permanency in the services of the First Party's Corporation and / or wages at par with regular workmen with consequential benefits.
- l) The said contract workmen agreed and accepted that with these consent terms, all their claims as against the First Party arising out of the pending disputes/ claims before all other Courts /Authorities / Forums in respect of their employment, have been fully resolved and the said contract workmen accept the same.
- m) The Second Party contract workmen have agreed to indemnify and keep indemnified and save harmless the First Party, its Directors and Officers from any claim of any nature whatsoever from any of these workmen / their legal heirs against the First Party Corporation.
- n) It has been agreed flat the Second Party contract workmen covered under the instant Reference shall not cite the said MOU i.e. Out of Court Settlement, arrived at between the parties under the present facts and circumstances of the case in order to amicably resolve the matter, before any competent court of law / tribunal / authority for seeking wages and benefits at par with regular employees or otherwise, for present or in future at any stage or in any proceedings involving any other employee/ s or contract employees.
- o) It has been agreed and understood by and between the parties that the said contract workmen, to whom the benefit of continuity as contract workmen under the respective contractors at the Corporations Establishment at HP Nagar Housing Complex (East & West), Mumbai, has been extended, shall not resort to any agitation, stage demonstration / coercive picketing or indulge in any other act against the Corporation or its officers affecting the working of the Corporation in support of their any or alleged demands of permanency / regularization in the employment of the Corporation / parity of wages along with regular workmen of the Corporation or whatsoever nature and indeed no such demand shall hereinafter be made in future.
- p) It has been agreed that the financial benefits arising out of said settlement would be paid effective 1/4/2011 onwards. However, while calculating the arrears, the incremental revision @ 30/o of additional fixed allowance would not be calculated and such incremental revision would be payable with prospective effect, i.e. effective January 2015 onwards.
- q) It has been agreed that the benefit accruing out of the settlement entered between the First Party and Second Party contract workmen shall be binding as to full and final settlement of all claims / demands of whatsoever nature as may be conceived under any law arising out of their engagement / non-engagement in the Establishment of the First Party through the contractors or otherwise.

3. It is submitted that in view of the settlement arrived at between the Parties, Second Party agree to forgo the claim for regularization and wages at par with regular employees for all the workmen for whom they have espoused the cause and raised the instant Industrial Dispute. The Second Party also categorically forgo any claim of monetary / regularization or any other kind of benefit whatsoever nature in respect of the contract workmen, save & except the benefits which has been amicably agreed upon in the Out of Court Settlement entered with the Second Party contract workmen.

4. It is submitted that in view of above, the parties i.e. the First Party as well as Second Party Contract Workmen humbly pray that this Hon'ble Tribunal may be pleased to dispose off the present Reference.

Signed on this day of 3rd of October, 2016 at Mumbai

Sd/-

Lancy D'Souza
(Advocate for the first party)

Sd/-

Surinder Kumar
(HPCL)

Sd/-

(UmeshNabar)

Advocate of Second Party

For and on behalf of Second Party

Sd/-

1. Mahesh M Bhosale

Sd/-

2. Dhanaji Y. Kokare

Sd/-

3. Jamil Y. Shaikh

4. Sd/-

Moreshwar A. Patil

5. Sd/-

Hansbahadur N. Singh

6. Sd/-

Kasim Hussain Mulla

7. Sd/-

Sahebrao Patil

8. Sd/-

Sanjay S. Nikalje

9. Sd/-

Vijay G. Nikalje

10. Sd/-

Balasaheb B. Thorat

11. Sd/-

Dadasaheb B. Jare

12. Sd/-

Prakash Parab

13. Sd/-

Ramakant P. Gawale

14. Sd/-

Babu S. Shetty.

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2406.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 53/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.12.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th December, 2016

S.O. 2406.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 05.12.2016.

[No. L-22013/1/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 14th day of September, 2016**INDUSTRIAL DISPUTE L.C. No. 53/2007****Between :**

Sri Goli Ravinder,
S/o Posham,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
IK & CHNR Area,
Adilabad District.
2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
Ch-2 Incline, IK & CHNR Area,
Adilabad District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri M.V. Hanumantha Rao, Advocate

AWARD

Sri Goli Ravinder, who worked as Badli filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No.SRP/PER/13.008/5711 dated 8.8.2006 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as badli filler at IK-1 incline and later he was transferred to CHNR-2 incline vide order No.I/P/PER/008/2004/1548 dt. 30.7.2004 and joined in duty on 7.12.2005 at CHNR-2 incline. From the date of appointment he was regular in his duties till the year 2003. During that period the Petitioner suffered with severe back pain and other health family problems. The Petitioner has also met with a road accident and admitted in the area hospital, RKP with his spinal pain and was under sick from 29.1.2002 to 24.7.2003. During this period the Petitioner was referred to CMO, Kothagudem for further treatment and referred back to RKP area hospital. The Petitioner has also taken treatment of physio therapy for a period of 40 days and thereafter he was once again referred to KGM main hospital. Even thereafter, there was no improvement, the Petitioner's well wishers advised him to take treatment at Government hospital, Peddapalli, as expert Doctors are available there for spinal problems. The Petitioner believed the version of his well wishers and taken treatment there, but his health condition was not improved. The Petitioner was further referred to Corporate Medical Board and was not relieved from back pain and he went to various hospitals at Hyderabad for early recoup. In this process, the Petitioner undergone severe spinal pain and sustained huge financial loss. While the matter stood thus, charge sheet dated 7.7.2005 was issued by the Respondents alleging that the Petitioner absented for duty during the year 2004, which amounts to misconduct under company's Standing Order No.25.31. Subsequently, inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to putforth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer a show cause notice dated

8.2.2006 was issued and subsequently the Petitioner was dismissed from service w.e.f. 14.8.2006 vide proceedings dated 8.8.2006. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 2004 was only on account of his recurrent spinal problem and due to his illhealth and for this he could not attend his duties sincerely, but without considering any of his submissions, the Petitioner was dismissed from service w.e.f. 14.8.2006 vide office order dated 8.8.2006. It is also stated that the action of the Respondent management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of principles of natural justice. The Petitioner has rendered about 7 years of continuous service in the Respondents' management. the Petitioner approached the Respondents to consider his case sympathetically but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No.SRP/PER/13.008/5711 dated 8.8.2006 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the petition, with averments in brief as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner has been dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed on 8.12.2005 and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice No.CH-2/R4/2006/327 dated 8.2.2006 giving an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent No.1 was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet, and after receiving the show cause notice on 8.6.2004. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 26.3.2009, in view of the memo filed by the counsel for the Petitioner, stating therein, not to challenge the validity of the domestic enquiry.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Goli Ravinder is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.1:** During the course of argument, Learned Counsel appearing on behalf of the Petitioner submitted that due to illness, the Petitioner could not be able to attend his duty sincerely. It is also contended that the Petitioner met with a severe accident for which he was given treatment in several hospitals including the company hospital and due to his ill-health he could not be able to attend his duties regularly. Even in his show cause the Petitioner has mentioned the fact of his illness but it has not been considered during the course of the enquiry. But on account of absenteeism capital punishment of dismissal from service has been imposed on the Petitioner. When the Petitioner has taken a stand that due to illness he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. But, the authority has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondent company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous, remaining absent is not unusual. In this case, due to illness the Petitioner could not be able to be regular in his duty. During the time of his illness the Petitioner has been admitted in several hospitals for his recovery. The Petitioner has also faced an accident during the period of his absence from

duty. In fact, due to illness the Petitioner has remained absent in his duties and a proceeding was initiated for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment has been imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court and is ready to provide bread and butter to his family members. When he has already realised his mistake one chance should be given to him for reinstatement into service. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent for dismissal of service is too harsh. Therefore, it can safely be stated that the action of the management in imposing the punishment of dismissal from service to Sri Goli Ravinder is not legal and justified.

This point is answered accordingly.

10. Point Nos. II & III: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Goli Ravinder is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. Now, after dismissal of service the Petitioner has become jobless and he being the sole earning member of his family, is unable to provide a square meal to his family members. In such a circumstances, atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondent's management. But as the Petitioner has not come to the court in time he is not entitled to get the relief as claimed in his petition. But he is entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

It is ordered that the workman Sri Goli Ravinder be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain minimum mandatory 20 musters every month and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will be terminated without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 14th day of September, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2407.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 58/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.12.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th December, 2016

S.O. 2407.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 05.12.2016.

[No. L-22013/1/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 30th day of September, 2016**INDUSTRIAL DISPUTE L.C. No. 58/2007****Between :**

Sri Gowda Krishna,
S/o Late G. Rajaiah,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The Project Officer,
M/s. Singareni Collieries Company Ltd.,
IK & CHR Mines, Srirampur,
Adilabad District.
2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
Chennur-2 Incline, Srirampur,
Adilabad District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

Sri Gowda Krishna, who worked as Badli filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. SRP/PER/13.008/2983 dated 30.5.2005 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as badli filler vide office order dated 6.2.2002 and on completion of training he was posted to work at Srirampur Area vide office order dated 16.5.2002 and posted to work at Chennur-2 Incline. During the year 2003 the Petitioner suffered ill-health and other family problems. He has taken treatment at the company's hospital and also at other private hospitals. The Petitioner used to attend his duties by undertaking journey from Jawaharnagar to Chennur as he is residing in company's allotted quarter at Jawaharnagar, Godavarikhani. This arduous journey also caused severe health disorder to the Petitioner. While the matter stood thus, charge sheet dated 25.5.2004 was issued by the Respondents alleging that the Petitioner absented for duty during the year 2003, which

amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. But basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and also basing on the erroneous findings of the Enquiry Officer a show cause notice was issued and subsequently the Petitioner was dismissed from service w.e.f. 1.6.2005 vide office order dated 30.5.2005. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 2003 was only on account of his ill-health and other family problems, for this he could not attend his duties sincerely, but without considering any of his submissions, the Petitioner was dismissed from service w.e.f. 1.6.2005 vide office order dated 30.5.2005. It is also stated that the action of the Respondent management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of principles of natural justice. The Petitioner has rendered about 3 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. SRP/PER/13.008/2983 dated 30.5.2005 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the petition, with averments in brief as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner has been dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, Respondent No.1 was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet, and after receiving the show cause notice on 30.10.2004. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 23.1.2010, in view of the memo filed by the counsel for the Petitioner, stating therein, not to challenge the validity of the domestic enquiry.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Gowda Krishna is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.1:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to his mother's illness and other family problems, the Petitioner could not be able to attend his duty sincerely. It is also contended that the Petitioner was suffering from ill-health and as such, he could not be able to attend his duties regularly. Even in his show cause the Petitioner has mentioned the fact of his illness but it has not been considered during the course of the enquiry. But on account of absenteeism capital punishment of dismissal from service has been imposed on the Petitioner. When the Petitioner has taken a stand that due to illness he could not be able to attend his duties regularly and remained absent, the authority should have considered his case but, without considering any of the submissions of the Petitioner, the authority has passed one cryptic and unreasoned order and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed

by the Respondent company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous, remaining absent is not unusual. In this case, due to illness the Petitioner could not be able to regular in his duty. In fact, due to illness the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment has been imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the Tribunal and is ready to provide bread and butter to his family members. When he has already realised his mistake atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender. His past conduct has not been considered before imposing punishment. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent for dismissal of service is too harsh. Therefore, it can safely be stated that the action of the management in imposing the punishment of dismissal from service to Sri Gowda Krishna is not legal and justified.

This point is answered accordingly.

10. Point Nos. II & III: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Gowda Krishna is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the Tribunal with a prayer for reinstatement into service he should be given a chance to serve for his family members. Now, after dismissal of service the Petitioner has become jobless and he being the sole earning member of his family, is unable to provide a square meal to his family members. In such a circumstances, atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But, in the circumstances stated above, the Petitioner is not entitled to get all the relief as claimed in his petition. But the Petitioner is entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

It is ordered that the workman Sri Gowda Krishna be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain minimum mandatory 20 musters every month and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will be terminated without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 30th day of September, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2408.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 142/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.12.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th December, 2016

S.O. 2408.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 142/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 05.12.2016.

[No. L-22013/1/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 22nd day of September, 2016**INDUSTRIAL DISPUTE L.C. No. 142/2013****Between :**

Sri Jupalli Srinivas,
S/o Satyanarayana,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The Director (PA & W),
M/s. Singareni Collieries Company Ltd.,
Kothagudem, Khammam District.
2. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Kothagudem, Khammam District.
3. The Colliery Manager,
M/s. Singareni Collieries Company Ltd.,
VK 7 Incline,
Kothagudem, Khammam District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

Sri Jupalli Srinivas, who worked as Badli filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring proceeding No. KGM/PER/7/4189, dated 22.12.2009 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly

granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows:**

The Petitioner was appointed as badli filler in the 1st Respondent company in the year 1992 and was converted as General Mazdoor in 1995. The Petitioner could not be regular to his duties due to his ill-health and other family problems. While the matter stood thus, charge sheet dated 10.3.2009 was issued by the Respondents alleging that the Petitioner absented for duty during the year 2008, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order No. KGM/PER/7/4189, dated 22.12.2009. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 2008 was only on account of his ill-health and other family problems. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of principles of natural justice. The Petitioner has rendered several years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. KGM/PER/7/4189, dated 22.12.2009 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. **The Respondents filed counter denying the averments made in the petition, with averments in brief as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed as Badli Filler in the Respondent's company on 27.9.1992 at Pk.1 incline, Manuguru Area and drafted as General Mazdoor. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed on 31.3.2009 and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice dated 31.10.2009 giving an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Petitioner from service. It is also stated that in the year 2007, the Petitioner was reverted to the lower stage by reducing four increments from his basic pay as General Mazdoor Category-II w.e.f. 1.12.2007, for his absenteeism during the year 2006. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet, and after receiving the show cause notice on 31.10.2009. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. The Learned Counsel for the Petitioner filed one memo requesting the Court to take up the case on its own merits. Learned Counsel for the Respondents raised no objection to such memo. Hence, both the parties only advanced their arguments in support of their claim.

5. **In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Jupalli Srinivas is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

6. **Point No.1:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness, the Petitioner could not be able to attend his duty sincerely. It is also contended that the Petitioner suffered psychological problem for which he was given treatment in several hospitals and due to his ill-health he could not be able to attend his duties regularly. Even in his show cause the Petitioner has mentioned the fact of his illness but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service has been imposed on the Petitioner. When the Petitioner has taken a stand that

due to illness he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. But, the authority has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

7. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

8. Admittedly, working in the Mines is hazardous, remaining absent is not unusual. In this case, due to illness the Petitioner could not be able to be regular in his duty. During the time of his illness the Petitioner has been admitted in several hospitals for his recovery. In fact, due to illness the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court and is searching ways and means to provide bread and butter to his family members. When the Petitioner has already realised his mistake one chance should be given to him for reinstatement into service. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action of the management in imposing the punishment of dismissal from service to Sri Jupalli Srinivas is not legal and justified.

This point is answered accordingly.

9. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Jupalli Srinivas is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case as the Petitioner has not come to the court in time he is not entitled to get all the relief as claimed in his claim petition. But he is entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

It is ordered that the workman Sri Jupalli Srinivas be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain minimum mandatory 20 musters every month and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will be terminated without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 22nd day of September, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2409.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 113/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.12.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th December, 2016

S.O. 2409.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 113/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 05.12.2016.

[No. L-22013/1/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 27th day of September, 2016**INDUSTRIAL DISPUTE L.C. No. 113/2006****Between :**

Sri Sadula Ramesh,
S/o Mallaiah,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
IK & CHNR Area, Chennur,
Adilabad District.
2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
Ch-2 Incline,
Adilabad District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri M.V. Hanumantha Rao, Advocate

AWARD

Sri Sadula Ramesh, who worked as Badli filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No.SRP/PER/13.008/4021 dated 20.5.2006 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service

duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows:**

The Petitioner was appointed as badli filler on compassionate grounds on 12.8.2002 and was posted to work at Chennur-2 Incline. From the date of appointment he was performing his duties obediently. While the matter stood thus, charge sheet dated 20.4.2005 was issued by the Respondents alleging that the Petitioner absented for duty during the year 2004, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, an inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer a show cause notice dated 8.2.2006 was issued and subsequently the Petitioner was dismissed from service vide proceedings dated 20.5.2006. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 2004 was only on account of his ill-health and for this he could not attend his duties sincerely, but without considering any of his submissions, the Petitioner was dismissed from service vide office order dated 20.5.2006. It is also stated that the action of the Respondent management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of principles of natural justice. The Petitioner has rendered about 4 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No.SRP/PER/13.008/4021 dated 20.5.2006 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc.

3. **The Respondents filed counter denying the averments made in the petition, with averments in brief as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner has been dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice dated 17.9.2005 giving an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent No.1 was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet, and after receiving the show cause notice on 8.6.2004. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 16.2.2009, in view of the memo filed by the counsel for the Petitioner, stating therein, not to challenge the validity of the domestic enquiry.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. **In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Sadula Ramesh is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, Learned Counsel appearing on behalf of the Petitioner submitted that due to illness, the Petitioner could not be able to attend his duty sincerely. It is also contended that the Petitioner was suffering from ill-health as such, he could not be able to attend his duties regularly. Even in his show cause the Petitioner has mentioned the fact of his illness but it has not been considered during the course of the enquiry. But on account of absenteeism capital punishment of dismissal from service has been imposed on the Petitioner. When the Petitioner has taken a stand that due to illness he could not be able to attend his duties regularly and remained absent,

the authority should have considered his case while imposing punishment. But, the authority has passed one cryptic and unreasoned order and given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondent company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous, remaining absent is not unusual. In this case, due to illness the Petitioner could not be able to regular in his duty. In fact, due to illness the Petitioner has remained absent in his duties and a proceeding was initiated for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment has been imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court and is ready to provide bread and butter to his family members. When he has already realised his mistake one chance should be given to him for reinstatement into service. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent for dismissal of service is too harsh. Therefore, it can safely be stated that the action of the management in imposing the punishment of dismissal from service to Sri Sadula Ramesh is not legal and justified.

This point is answered accordingly.

10. Point Nos. II & III: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Sadula Ramesh is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. Now, after dismissal of service the Petitioner has become jobless and he being the sole earning member of his family, is unable to provide a square meal to his family members. In such a circumstances, atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondent's management. But in the circumstances stated above the Petitioner is not entitled to get all the relief as claimed in his petition. But he is entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

It is ordered that the workman Sri Sadula Ramesh be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain minimum mandatory 20 musters every month and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will be terminated without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 27th day of September, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2410.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचात (संदर्भ सं. 132/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.12.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th December, 2016

S.O. 2410.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 05.12.2016.

[No. L-22013/1/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 22nd day of September, 2016**INDUSTRIAL DISPUTE L.C. No. 132/2006****Between :**

Sri Rajkumar Swamy,
S/o Raja Ratnam,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Mandamarri,
Adilabad District.
2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
SMG-3 Incline, Mandamarri Area,
Adilabad District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

Sri Rajkumar Swamy, who worked as Badli filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No.P/MM/7/2/98/2888 dated 4.10.1998 issued by Respondent No.1 as

illegal, arbitrary, and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as badli filler on 23.6.1990 and later he was promoted as Coal Filler. From the date of appointment he was regular in his duties till the year 1996. During the year 1997 the Petitioner suffered sickness and his wife suffered with paralytic problem and she lost movement of most of the parts of the body, such as hands, legs and she was bed ridden for quite long time on account of paralysis. In the circumstances, the Petitioner left with no other alternative except to accompany his wife to various hospitals. While the matter stood thus, charge sheet dated 28.4.1998 was issued by the Respondents alleging that the Petitioner absented for duty and worked only for 16 days in the year 1997, which amounts to misconduct under company's Standing Order No.25(25). Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to putforth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer a show-cause notice dated 20.8.1998 was issued and subsequently the Petitioner was dismissed from service w.e.f. 10.10.1998 vide proceedings dated 4.10.1998. It is stated that during the course of enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 1997 was only on account of his illhealth and his wife suffered with paralysis, and for this he could not attend his duties sincerely, but without considering any of his submissions, the Petitioner was dismissed from service w.e.f. 10.10.1998 vide office order dated 4.10.1998. It is also stated that the action of the Respondent's management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of principles of natural justice. The Petitioner has rendered about 7 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. P/MM/7/2/98/2888 dated 4.10.1998 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc.

3. The Respondents filed counter denying the averments made in the petition, with averments in brief as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner has been dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed on 30.6.1998 and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice dated 20.8.1998 giving an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent No.1 was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 15.4.2010, in view of the memo filed by the counsel for the Petitioner conceding the validity of the domestic enquiry.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Rajkumar Swamy is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.1:** During the course of argument, Learned Counsel appearing on behalf of the Petitioner submitted that due to illness, the Petitioner could not be able to attend in his duty sincerely. It is also contended that the wife of the Petitioner suffered paralysis for which she was given treatment in several hospitals and the Petitioner used to accompany her, and also due to his ill-health the Petitioner could not be able to attend his duties regularly. Even in his show cause the Petitioner has mentioned the fact of his illness, but it has not been considered during the course of the enquiry. But on account of absenteeism capital punishment of dismissal from service has been imposed on the Petitioner. When the Petitioner has taken a stand that due to illness he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. But, the authority has given the capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous, remaining absent is not unusual. In this case, due to illness the Petitioner could not be able to be regular in his duty. During the time of his illness and for his wife's illness, the Petitioner consulted doctors of several hospitals for their recovery. In fact, due to illness the Petitioner has remained absent in his duties, and a proceeding was initiated for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment has been imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court and is ready to provide bread and butter to his family members. When the Petitioner has already realised his mistake atleast one chance should be given to him for his reinstatement into service. While imposing capital punishment to his employees, the managements should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action of the management in imposing the punishment of dismissal from service to Sri Rajkumar Swamy is not legal and justified.

This point is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Rajkumar Swamy is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. In the circumstances as stated above, when after dismissal of service the Petitioner has become jobless and he being the sole earning member of his family, has unable to provide a square meal to his family members, atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondent's management. But as the Petitioner has not come to the court in time he is not entitled to get all the relief as claimed in his petition. But he is entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

It is ordered that the workman Sri Rajkumar Swamy be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain minimum mandatory 20 musters every month and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will be terminated without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 22nd day of September, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2411.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 38/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.12.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th December, 2016

S.O. 2411.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 05.12.2016.

[No. L-22013/1/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 22nd day of September, 2016**INDUSTRIAL DISPUTE L.C. No. 38/2010****Between :**

Sri Durgam Posham,
S/o Mallaiah,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam Area-I, Ramagundam
Karimnagar District.
2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
GDK No. 1 & 3 Incline, Ramagundam Area-I,
Ramagundam, Karimnagar District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

Sri Durgam Posham, who worked as Badli filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. RG.I/PER/S/46/4062 dated 21/23.7.2009 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as badli filler in the 1st Respondent company and by virtue of his sincere and hard work, he was confirmed as Coal Filler. He was regular to his duties till the year 2007. During the year 2008 and also for some time in 2009, the Petitioner suffered psychological problem and as such he was taken to various hospitals including that of PHC, Raginedu, Karimnagar District. It is stated that by the end of 2009 the Petitioner became healthy and recovered from ill-health. While the matter stood thus, one charge sheet dated 1.3.2009 was issued by the Respondents alleging that the Petitioner absented for duty during the year 2008, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted, and during the time of enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer a show cause notice dated 3.6.2009 was issued to the Petitioner and subsequently the Petitioner was dismissed from service w.e.f. 27.7.2009 vide proceedings dated 21/23.7.2009. It is also stated that during the course of the above said enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 2008 was only on account of his psychological problem and other family problems. But without considering any of his submissions, the Petitioner was dismissed from service w.e.f. 27.7.2009 vide proceedings dated 21/23.7.2009. It is also stated that the action of the Respondent management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of principles of natural justice. The Petitioner has rendered several years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. RG.I/PER/S/46/4062 dated 21/23.7.2009 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the petition, with averments in brief as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed as Badli Filler in the Respondent company on 22.1.1994 at Gdk.1 & 3 incline and later he was regularized as Coal Filler w.e.f. 1.1.2003. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed on 17.4.2009 and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice dated 12.5.2009 giving an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view, and lastly, he Respondent No.1 was constrained to dismiss the Petitioner from service. It is also stated that in the year 2007, the Petitioner was imposed a penalty of stoppage of three SPRAs with cumulative effect for his absenteeism during the year 2006. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet, and after receiving the show cause notice on 12.5.2009. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 9.2.2011.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their respective claim.

6. **In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Durgam Posham is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.1:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness, the Petitioner could not be able to attend his duty sincerely. It is also contended that the Petitioner suffered psychological problem for which he was given treatment in several hospitals and due to his ill-health he could not be able to attend his duties regularly. Even in his show cause the Petitioner has mentioned the fact of his illness but it has not been considered during the course of the enquiry. But on account of absenteeism capital punishment of dismissal from service has been imposed on the Petitioner. When the Petitioner has taken a stand that due to illness he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing a severe punishment. But, without considering the plight of the Petitioner the authority has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous, remaining absent is not unusual. In this case, due to illness the Petitioner could not be able to be regular in his duty. During the time of his illness the Petitioner has been admitted in several hospitals for his recovery. In fact, due to illness the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. Now, after dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court and is searching ways and means to provide bread and butter to his family members. In such a circumstances when the Petitioner has already realised his mistake, atleast one chance should be given to him for reinstatement into service. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members, who had already been accustomed in their routine life. Thus, in this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action of the management in imposing the punishment of dismissal from service to Sri Durgam Posham is not legal and justified.

This point is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Durgam Posham is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread winner of his family, is unable to provide a square meal to his family members. In the circumstances stated above, atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondent management. But the Petitioner is not entitled to get all the relief as claimed in his petition. But he is entitled to be given a chance to work in the Respondent management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

It is ordered that the workman Sri Durgam Posham be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain minimum mandatory 20 musters every month and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will be terminated without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's

hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 22nd day of September, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2412.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 114/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.12.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th December, 2016

S.O. 2412.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 114/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 05.12.2016.

[No. L-22013/1/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 30th day of September, 2016

INDUSTRIAL DISPUTE L.C. No. 114/2007

Between :

Sri T. Solomon Raja Babu,
S/o David Raj,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Mandamarri,
Adilabad District.
2. The Colliery Manager,
M/s. Singareni Collieries Company Ltd.,
KK-1 Incline, Mandamarri Area,
Mandamarri, Adilabad District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

Sri T. Solomon Raja Babu, who worked as Badli filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. P/MM/7/2/98/3588 dated 8.12.1998 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as badli filler on 6.4.1987. From the date of appointment he was performing his duties regularly till the year 1997. But while working in the mine the Petitioner met with a mine accident, resulted in deep cut injury to his left leg and was under going treatment for about a month in company's hospital. Further, as the pain in his leg was recurring he could not be regular during the year 1997. While the matter stood thus, charge sheet dated 6.3.1998 was issued by the Respondents alleging that the Petitioner absented for duty during the year 1997, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, an inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and also basing on the erroneous findings of the Enquiry Officer a show cause notice dated 20.11.1998 was issued and subsequently the Petitioner was dismissed from service w.e.f. 16.12.1998 vide proceedings dated 8.12.1998. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 1997 was only on account of his ill-health and for this he could not attend his duties sincerely, but without considering any of his submissions, the Petitioner was dismissed from service w.e.f. 16.12.1998 vide proceedings dated 8.12.1998. It is also stated that the action of the Respondent management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of principles of natural justice. The Petitioner has rendered about 10 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. P/MM/7/2/98/3588 dated 8.12.1998 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the petition, with averments in brief as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner has been dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, Respondent No.1 was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet, and after receiving the show cause notice on 20.11.1998. It is further stated

that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 24.3.2009, in view of the memo filed by the counsel for the Petitioner, stating therein, not to challenge the validity of the domestic enquiry.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. **In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri T. Solomon Raja Babu is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness, the Petitioner could not be able to attend his duty sincerely. It is also contended that the Petitioner was suffering from ill-health and as such, he could not be able to attend his duties regularly. Even in his show cause the Petitioner has mentioned the fact of his illness but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service has been imposed on the Petitioner. When the Petitioner has taken a stand that due to illness he could not be able to attend his duties regularly and remained absent, but the authority without considering any of his submissions passed one cryptic and unreasoned order, and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondent company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous, remaining absent is not unusual. In this case, due to illness the Petitioner could not be able to be regular in his duty. In fact, due to illness the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment of dismissal from service has been imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the Tribunal and is ready to provide bread and butter to his family members. When he has already realised his mistake atleast one chance should be given to him for his reinstatement into service. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, while several modes of punishment are enumerated in company's Standing Orders the punishment imposed by the Respondent for dismissal of service is too harsh. Therefore, it can safely be stated that the action of the management in imposing the punishment of dismissal from service to Sri T. Solomon Raja Babu is not legal and justified.

This point is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri T. Solomon Raja Babu is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. Now, after dismissal of service the Petitioner has become jobless and he being the sole earning member of his family, is unable to provide a square meal to his family members. In such a circumstances, atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondent's management. But in the circumstances stated above the Petitioner is not entitled to get all the relief as claimed in his petition. But he is entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

ORDER

It is ordered that the workman Sri T. Solomon Raja Babu be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain minimum mandatory 20 musters every month and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will be terminated without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 30th day of September, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 5 दिसम्बर, 2016

का.आ. 2413.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 102/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.12.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th December, 2016

S.O. 2413.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 05.12.2016.

[No. L-22013/1/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 30th day of September, 2016

INDUSTRIAL DISPUTE L.C. No. 102/2007

Between :

Sri Singathi Mogili,
S/o Hanumanth,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad

...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri,
Adilabad District

...Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri S.M. Subhani, Advocate

AWARD

Sri Singathi Mogili, who worked as Badli filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No.P/MM/7/2/00/3529 dated 16.8.2000 issued by Respondent as illegal, arbitrary, and to set aside the same consequently directing the Respondent to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as badli filler on 20.8.1997 and later he was promoted as Coal Filler. From the date of appointment he was regular in his duties till the year 1998. During the year 1999 the Petitioner suffered ill-health and other family problems. While the matter stood thus, one charge sheet dated 22.1.2000 was issued by the Respondent alleging that the Petitioner absented for duty which amounts to misconduct under company's Standing Order No.25(25). Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to putforth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and also basing on the erroneous findings of the Enquiry Officer a show-cause notice dated 7.2.2000 was issued and subsequently the Petitioner was dismissed from service w.e.f. 23.8.2000 vide proceedings dated 16.8.2000. It is stated that during the course of enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 1999 was only on account of his ill-health and for this he could not attend his duties sincerely, but without considering any of his submissions, the Petitioner was dismissed from service w.e.f. 23.8.2000 vide proceedings dated 16.8.2000. It is also stated that the action of the Respondents' management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of principles of natural justice. The Petitioner has rendered about 3 years of continuous service in the Respondents' management. The Petitioner approached the Respondent to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. P/MM/7/2/98/2888 dated 4.10.1998 issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc.

3. The Respondent filed counter denying the averments made in the petition, with averments in brief as follows:

In the counter the Respondent while admitting some of the factual aspects to be true, stated that the Petitioner has been dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed on 30.6.1998 and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice dated 20.8.1998 giving an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 20.2.2009, in view of the memo filed by the counsel for the Petitioner conceding the validity of the domestic enquiry.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. **In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Singathi Mogili is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness, the Petitioner could not be able to attend in his duty regularly. Even in his show cause the Petitioner has mentioned the fact of his illness, but it has not been considered during the course of the enquiry. But on account of absenteeism capital punishment of dismissal from service has been imposed on the Petitioner. When the Petitioner has taken a stand that due to illness he could not be able to attend his duties regularly and remained absent, the authority without considering any of his submissions has passed one cryptic and unreasoned order and has given the capital punishment of dismissal from service to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders. He further contended to consider the plight of the Petitioner and his family members in such a hard days.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous, remaining absent is not unusual. In this case, due to illness the Petitioner could not be able to regular in his duty. In fact, due to illness the Petitioner has remained absent in his duties, and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment has been imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court and is searching to provide bread and butter to his family members. When the Petitioner has already realised his mistake atleast one chance should be given to him for his reinstatement into service. While imposing capital punishment to his employees, the managements should think of the condition of the workers as well as his family members. In this case, while several modes of punishment are enumerated in company's Standing Orders, the punishment imposed by the Respondent for dismissal of service is too harsh. Therefore, it can safely be stated that the action of the management in imposing the punishment of dismissal from service to Sri Singathi Mogili is not legal and justified. This point is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Singathi Mogili is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for his reinstatement into service he should be given a chance to serve for his family members. In the circumstances as stated above, when after dismissal of service the Petitioner has become jobless and he being the sole earning member of his family, was unable to provide a square meal to his family members, atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondent's management. But in the circumstances stated above the Petitioner is not entitled to get all the relief as claimed in his petition. But he is entitled to be given a chance to work in the Respondent's management by way of reinstatement into service.

Thus, Point Nos. II & III are answered accordingly.

ORDER

It is ordered that the workman Sri Singathi Mogili be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain minimum mandatory 20 musters every month and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will be terminated without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's

hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 30th day of September, 2016.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 8 दिसम्बर, 2016

का.आ. 2414.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बिलासपुर के पंचाट (संदर्भ सं. 01/15) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.09.2016 को प्राप्त हुआ था।

[सं. एल-22012/23/2014-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th December, 2016

S.O. 2414.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/15) of the Central Government Industrial Tribunal-cum-Labour Court, Bilaspur as shown in the Annexure, in the Industrial Dispute between the management of M/s. South Eastern Coalfields Limited and their workmen, received by the Central Government on 14.09.2016.

[No. L-22012/23/2014-IR (CM-II)]

RAJENDER SINGH, Section Officer

अनुबन्ध

न्यायालय-श्रम न्यायाधीश सह पीठासीन अधिकारी, अंतर्गत औद्योगिक विवाद अधिनियम, श्रम न्यायालय, बिलासपुर (छ.ग.)

प्रक० क्र०- 1/आई०डी०ए०/रिफरेन्स/सेन्ट्रल गवर्नमेंट/2015

श्री बबलू सिंह

पूर्व जनरल मजदूर

द्वारा श्री दीपक जायसवाल, जनरल सेक्रेटरी आर.एम.एम.सी.

इंदिरा विहार कालोनी, बिलासपुर (छ.ग.)

...प्रथम पक्षकार/कर्मचारी

विरुद्ध

जनरल मैनेजर

भटगांव एरिया,

एस.ई.सी.एल. (साऊथ ईस्टर्न कोलफील्ड लिमि०)

पोस्ट आफिस भटगांव, जिला सूरजपुर (छ.ग.)

...द्वितीय पक्षकार/नियोक्ता

:: अधिनिर्णय दिनांक-09.09.2016 ::

सेन्ट्रल गवर्नमेंट, इण्डस्ट्रीयल ट्रिब्युनल कम लेबर कोर्ट जबलपुर (मध्यप्रदेश) (C.G.I.T.) को मिनिस्ट्री ऑफ लेबर, सेन्ट्रल गवर्नमेंट ऑफ इण्डिया के रिफरेन्स नं० L-22012/23/2014-IR (CM-II) नई दिल्ली दिनांक 27.03.2014 के द्वारा संदर्भित इण्डस्ट्रीयल डिस्पुट का यह रिफरेन्स प्रकरण सी.जी.आई.टी. जबलपुर द्वारा ट्रांसफर नं०/1/2014 दिनांक 09.01.2014 के अन्तर्गत रिफरेन्स प्रकरण क्रमांक-

आर/27/2014 श्रम न्यायालय बिलासपुर को अधिनिर्णयार्थ अंतरण (Transfer) किया गया है। फाईल क्रमांक वाय-20025/1/2013-सी. एल.एस.-॥ गवर्नमेंट ऑफ इण्डिया मिनिस्ट्री ऑफ लेबर एण्ड एम्प्लायमेंट के अण्डर सेक्रेटरी द्वारा दिनांक 03.12.2015 को सुनवाई के निर्देश के अंतर्गत श्रम न्यायालय बिलासपुर (छ.ग.) में प्रकरण क्रमांक 1/आई0डी0ए0/रिफरेन्स/ सेन्ट्रल गवर्नमेंट/2015 में यह प्रकरण अधिनिर्णय हेतु पंजीबद्ध किया गया है। मिनिस्ट्री ऑफ लेबर, गवर्नमेंट ऑफ इण्डिया के द्वारा प्रेषित संदर्भित अनुसूची निम्नानुसार है :-

SCHEDULE

Whether the action of the management of SECL through its General Manager, Bhatgaon Area of SECL, PO-Bhatgaon, Distt Surajpur (CG) in dismissing the services of Shri Bablu Singh. Ex-General Mazdoor, Cat- 1 w.e.f. 20-07-2012 was legal, proper & justified? If not, to what relief the said workman is entitled to?

रिफरेन्स प्रकरण, नई दिल्ली मिनिस्ट्री ऑफ लेबर सेन्ट्रल गवर्नमेंट ऑफ इण्डिया से स्थानांतरण पर प्राप्त होने पर औद्योगिक विवाद अधिनियम 1947 की धारा 33 (बी) के अन्तर्गत प्रकरण में सुनवाई आरंभ की गई। प्रथम पक्षकार/कर्मचारी ने श्रम न्यायालय बिलासपुर में उपस्थित होकर स्टेटमेंट ऑफ क्लेम पेश किया है, जिसका संक्षिप्त अभिवचन यह है कि प्रथम पक्षकार/कर्मचारी ने महाप्रबंधक के डिसमिस आर्डर को निरस्त करने, निदेशक कार्मिक एवं अध्यक्षा को अपील आवेदन दिया था। प्रथम पक्षकार/कर्मचारी बबलू सिंह के सुपरवाइजर उसे खदान के ऐसे स्थान पर कार्य प्रदान करता था जहाँ हवा (आक्सीजन) की कमी, नमी की अधिकता, प्रकाश की कमी रहती थी। कार्य स्थल असुरक्षित था, इस कारण से प्रथम पक्षकार/कर्मचारी बीमार हो जाता था। प्रथम पक्षकार/कर्मचारी को आश्रित के रूप में द्वितीय पक्षकार के अधीन नौकरी प्राप्त हुई थी। प्रथम पक्षकार/कर्मचारी असुरक्षित वातावरण के कारण लगातार बीमार रहा और अस्वस्थता की स्थिति में डॉक्टर के सर्टिफिकेट के आधार पर द्वितीय पक्षकार/नियोक्ता को सूचित किया था। सूचना दिनांक 21.08.2010 को रजिस्ट्री से प्रबंधक को दी गई थी। प्रथम पक्षकार/कर्मचारी बीमारी से ठीक होने पर फीटनेस प्रमाण पत्र लेकर खान प्रबंधक 1/2 भटगांव के पास गया। खान प्रबंधक ने कोई कार्यवाही नहीं किया। बाद में प्रथम पक्षकार/कर्मचारी को बिना कोई विभागीय जांच, और बिना कोई उचित सूचना दिये द्वितीय पक्षकार/नियोक्ता द्वारा सेवा से हटाये जाने का पत्र प्रथम पक्षकार/कर्मचारी को दिया गया। पहली बार पत्र क्रमांक भट/एस.ए.एम. 16/12/662 दिनांक 20.07.2012 का पत्र प्रथम पक्षकार/कर्मचारी को प्राप्त हुआ तो उसे जानकारी हुई कि डिलीशन नं. 2033 दिनांक 20.07.2012 दण्ड और चेतावनी लिखी थी जिसमें स्थायी पता ग्राम चिरमिरी, पोस्ट चिरमिरी लिखा था। प्रबंधन ने प्रथम पक्षकार/कर्मचारी के द्वारा दिये गये स्थायी एवं अस्थायी पते पर कोई पत्राचार नहीं किया था। द्वितीय पक्षकार द्वारा गैर कानूनी रूप से प्रथम पक्षकार/कर्मचारी की सेवा समाप्त की है, जिसके फलस्वरूप यूनियन एवं प्रथम पक्षकार/कर्मचारी बबलू सिंह ने सहायक केन्द्रीय श्रमायुक्त के समक्ष आवेदन पेश किया, जिसमें सुनवाई के उपरान्त सहायक श्रमायुक्त केन्द्रीय के समक्ष प्रबंधन पक्ष स्टैण्डिंग आर्डर पेश करने हेतु असफल रहा। उसी आधार पर यह प्रकरण केन्द्रीय शासन के द्वारा संदर्भित किया गया है। प्रथम पक्षकार/कर्मचारी का वास्तविक पता जो उसकी सेवा पुस्तिका में है, जो प्रथम पक्षकार ने दिया था, उसके अनुसार पता- 64, दफाई, ग्राम कोरिया, पोस्ट कोरिया कालरी, जिला कोरिया (छ.ग.) दर्ज है तथा अस्थायी पता ग्राम करंजी पोस्ट करंजी जिला सरगुजा (छ.ग.) था जिसकी जानकारी द्वितीय पक्षकार को थी, उसके बावजूद द्वितीय पक्षकार द्वारा ग्राम चिरमिरी, पोस्ट चिरमिरी पर विभागीय जांच की सूचना भेजी जाती रही, जिसमें प्रथम पक्ष नहीं रहता। इस कारण विभागीय जांच अनुचित और अवैध है।

प्रथम पक्षकार/कर्मचारी, लगाये गये दोशों का आरोपी नहीं है। द्वितीय पक्षकार द्वारा जारी किया गया आदेश क्रमांक भट/एस.ए.एस.एम./16/12/262 दिनांक 19.07.2012 अनुचित और अवैध है। विभागीय जांच में कोई बचाव का अवसर नहीं दिया गया जो नैसर्गिक न्याय सिद्धान्त का पालन नहीं किया गया। दिया गया दण्ड अत्यंत कठोर है जबकि प्रथम पक्ष/कर्मचारी बीमार था। द्वितीय पक्ष उप क्षेत्रीय प्रबंधक ने प्रथम पक्षकार/कर्मचारी की सेवा समाप्त करने का आदेश दिया था, इसलिए सक्षम अधिकारी द्वारा आदेश जारी नहीं किये जाने से आदेश अवैध है। प्रथम पक्षकार बबलू सिंह दिनांक 31.07.2010 से 19.06.2012 तक लगातार बीमार था और उसके बावजूद बीमारी अर्थात् सीक लीव के साथ चिकित्सकीय प्रमाण-पत्र पेश किया था। द्वितीय पक्षकार का स्टैण्डिंग आर्डर सक्षम अथॉरिटी द्वारा अनुमोदित नहीं है। द्वितीय पक्षकार द्वारा की गई सभी कार्यवाही अनुचित और अवैध है। प्रथम पक्षकार/कर्मचारी ने दिनांक 27.06.2012 को ज्वाइनिंग दिया था इसके बावजूद भी द्वितीय पक्षकार/नियोक्ता द्वारा प्रथम पक्षकार/कर्मचारी को सेवा में नहीं लिया गया। प्रथम पक्षकार ने निवेदन किया है कि सेवा समाप्ति अवैध होने से निरस्त किया जावे और उसे क्षतिपूर्ति और वेतन सहित पूर्व पद पर पुनः पदस्थापित किया जावे।

द्वितीय पक्षकार/नियोक्ता, प्रबंधन पक्ष की ओर से वरिष्ठ प्रबंधक कार्मिक एस.ई.सी.एल. भटगांव ने जवाब दावा पेश किया है, संक्षिप्त अभिवचन यह है कि द्वितीय पक्ष ने अपने जवाब दावे में दावे के पैराग्राफ 01, पैराग्राफ 02, पैराग्राफ 03, पैराग्राफ 06, पैराग्राफ 07 और पैराग्राफ 08 के कथनों को मान्य होना स्वीकार किया है। द्वितीय पक्ष/नियोक्ता ने यह भी अभिवचन किया है कि प्रथम पक्षकार/कर्मचारी के साथ द्वितीय पक्ष/नियोक्ता भेदभाव और पक्षपात पूर्ण व्यवहार नहीं करता रहा था और उसे असुरक्षित स्थान पर कार्य प्रदान नहीं किया जाता था। वास्तविक तथ्य यह है कि बबलू सिंह की नियुक्ति चिकित्सा परीक्षण के उपरान्त भूमिगत खदान में कार्य के योग्य पाये जाने पर तथा उनके द्वारा नियुक्ति आदेश के नियम एवं शर्तों के पालन की स्वीकृति प्रदान किये जाने पर की गई थी। नवापारा भूमिगत खदान पूर्ण रूप से सुरक्षित खदान है। नियुक्ति के उपरान्त उसके सेवा अभिलेख के अवलोकन से ज्ञात होता है कि वे अपनी अंतिम उपस्थिति तिथि दिनांक 20.07.2010 से पूर्व वह बीमारी के कारण कभी भी अवकाश ग्रहण नहीं किया है और दिनांक 20.07.2010 के पश्चात प्रबंधन को उसके बीमारी की कोई सूचना प्राप्त नहीं है। जहाँ तक प्रथम पक्षकार का कथन है कि दिनांक 30.07.2010 को कार्य से लौटते समय चक्कर खाकर प्रथम पक्षकार/कर्मचारी बेहोश हो गया उस संबंध में कम्पनी के द्वारा विभागीय चिकित्सा की व्यवस्था की गई है उसमें कर्मचारियों को निशुल्क चिकित्सा प्रदान की जाती है। प्रथम पक्षकार/कर्मचारी ने द्वितीय पक्ष/नियोक्ता के द्वारा बनाये गये अस्पतालों में चिकित्सा सुविधा का लाभ नहीं लिया। प्रथम पक्षकार/कर्मचारी ने खान प्रबंधक को कोई फीटनेस प्रमाण-पत्र पेश नहीं किया, जबकि वास्तविकता यह है कि प्रथम पक्षकार/कर्मचारी जांच कार्य में उपस्थित नहीं हुआ इस कारण सूचना भेजी गई और समाचार पत्र में भी प्रकाशन कराया गया।

अपीलीय अधिकारी के समक्ष ठोस प्रमाण पेश नहीं किया इस कारण प्रथम पक्षकार/कर्मचारी का अपील आवेदन निरस्त कर दिया गया। द्वितीय पक्ष के कम्पनी का स्टैंडिंग आर्डर भारत सरकार के सक्षम अधिकारी द्वारा प्रमाणित किया गया है। प्रबंधन को प्रथम पक्षकार की अनुस्थिति संबंधी कोई सूचना प्राप्त नहीं हुई है। प्रथम पक्षकार ने जांच में अपना पक्ष नहीं रखा और जांच कार्यवाही में उपस्थित भी नहीं हुआ, इस कारण प्रथम पक्षकार को अनाधिकृत रूप से अनुपस्थित रहने के कारण नियमानुसार आरोप पत्र की प्रति उसके सेवा पुस्तिका में दर्ज पते पर रजिस्ट्री डाक द्वारा प्रेषित किया गया था। प्रथम पक्षकार/कर्मचारी बिना किसी पूर्व सूचना के दिनांक 20.07.2010 से अपने कार्य पर उपस्थित नहीं रहा जबकि स्थायी आदेश की धारा 26.30 के तहत कदाचार की श्रेणी में आता है जिसके कारण प्रथम पक्षकार को आरोप पत्र दिया जाकर जांच कार्यवाही में आरोप प्रमाणित पाये जाने पर दिनांक 10.03.2010 के माध्यम से दो वार्षिक वेतन रोके जाने का आदेश दिया गया और तीन वर्ष की उपस्थिति से उसकी उपस्थिति बहुत कम दर्ज है इस कारण दण्डादेश पारित किया गया जो उचित एवं वैध है। प्रथम पक्षकार का दावा असत्य होने से इंकार है इस कारण दावा निरस्त किया जावे।

उभय पक्ष को साक्ष्य पेश करने का अवसर दिया गया। न्यायालय द्वारा उभय पक्ष के तर्क पर विचार किया गया। प्रकरण में प्रस्तुत किये गये साक्ष्यों के न्यायालयीन कथन और दस्तावेजों का अवलोकन किया गया। प्रस्तुत साक्ष्य एवं दस्तावेजों का विश्लेषण करते हुए केन्द्रीय शासन की ओर से प्रेषित संदर्भित अनुसूची के प्रश्नों का उत्तर प्राप्त करते हुए निम्नानुसार निष्कर्ष प्राप्त हुए हैं :-

क्र०	अनुसूची/वाद प्रश्न	निष्कर्ष
01.	क्या एस.इ.सी.एल. भटगांव के जनरल मैनेजर द्वारा प्रथम पक्षकार/कर्मचारी श्री बबलू सिंह एकस-जनरल मजदूर का दिनांक 20.07.2012 को किया गया सेवा समाप्ति अनुचित और अवैध है ?	हाँ
02.	यदि नहीं तो, प्रथम पक्षकार/कर्मचारी किस सहायता का पात्र है ?	आदेशानुसार

वाद प्रश्न क्रमांक-01 के निष्कर्ष के आधार:- द्वितीय पक्षकार के द्वारा न्यायालय में पेश किये गये जवाब दावे में मान्य किये गये अभिवचनों और प्रस्तुत दस्तावेजों से यह प्रमाणित होता है कि प्रथम पक्षकार/कर्मचारी बबलू सिंह द्वितीय पक्षकार/नियोक्ता के अधीन नियमित कर्मचारी कैटेगरी-1, (जनरल मजदूर) के पद पर नियोजित कर्मचारी था प्रथम पक्षकार की नियुक्ति दिनांक 27.09.2007 को हुई थी। प्रथम पक्षकार ने आदेश 18 नियम 4 सी.पी.सी. के शपथ पत्र में बताया है कि दिनांक 30.07.2010 के प्रथम पाली में उसकी ड्यूटी थी तब अचानक उसे जी मिचलाना एवं उल्टी हुई थी, उस समय प्रथम पक्षकार कम्पनी के खदान के पास लगे करंजी ग्राम में कमरा किराये से लेकर ड्यूटी कर रहा था। तबियत खराब होने से वह अपने करंजी गांव में लिये किराये के कमरे में जाने के लिए निकला तब उसे उल्टी हुई और पेट में दर्द हुआ तथा श्वास लेने में तकलीफ हुई उस समय चालक ईश्वर सिंह चंदेल ने उसकी सहायता की ओर उसे उपचार के लिए बिलासपुर लेकर आ गया। दिनांक 19.02.2012 को डॉक्टर द्वारा मेडिकल रूप से फीट घोषित करने के बाद फीटनेस का ओरिजनल प्रमाण पत्र देकर ज्वाइनिंग करने तत्कालीन प्रबंधक 1/2 भटगांव खदान से मिला। प्रबंधक ने प्रथम पक्षकार को आश्वासन दिया कि प्रबंधन को ज्वाइनिंग के संबंध में अवगत करा दिया जावेगा। किन्तु दिनांक 19.07.2012 प्रथम पक्षकार को डिसमिसल आर्डर दे दिया गया।

प्रथम पक्षकार/कर्मचारी ने प्रदर्श पी/3 को गवर्नमेंट ऑफ इण्डिया का संदर्भित आदेश होना बताया है। प्रदर्श पी/4 फैलुअर ऑफ कंसीलेशन का रिपोर्ट होना बताया है। प्रदर्श पी/7 प्रथम पक्षकार बबलू सिंह के द्वारा बीमारी के कारण उपस्थित नहीं रहने का खान प्रबंधक को दिया गया पत्र है। प्रदर्श पी/8 प्रथम पक्ष बबलू सिंह द्वारा खान प्रबंधक को कार्य पर उपस्थित नहीं रहने की सूचना है। प्रदर्श पी/8-ए जिसके साथ मेडिकल सर्टिफिकेट मूलतः संलग्न कर दिया गया है। प्रदर्श पी/8-ए के मेडिकल प्रमाण पत्र में मेडिकल अफसर द्वारा दिनांक 31.07.2010 से 19.06.2012 तक बीमार होने तक का प्रमाण पत्र दिया है, जो दिनांक 19.06.2012 का मेडिकल सर्टिफिकेट है प्रदर्श पी/9 प्रथम पक्षकार बबलू सिंह द्वारा कार्मिक प्रबंधक को दिया गया पत्र है जो दिनांक 03.07.2012 को कार्मिक प्रबंधक को प्राप्त हुई है जिसमें पावती दर्ज है। प्रदर्श पी/10 विभागीय जांच के बाद सेवा से हटाये जाने का आदेश है, जो दिनांक 19.07.2012 को जारी हुई है। यह पत्र प्रथम पक्षकार ने दिनांक 22.07.2012 को प्राप्त होना बताया है।

प्रथम पक्षकार ने न्यायालयीन कथन में बताया है कि प्रबंधक द्वारा की गई कार्यवाही की सूचना पत्र प्राप्त नहीं हुई है। प्रदर्श पी/16 का आरोप पत्र भी उसे प्राप्त नहीं हुआ है। प्रथम पक्षकार ने न्यायालयीन कथन में बताया है कि प्रदर्श पी/17 उसकी सेवा पुस्तिका है, जिसमें उसने अपना सही पता थाना सिवान, ग्राम बरियापुर, पोस्ट पंचरूखी, जिला सिवान राज्य बिहार एवं वर्तमान पता 64 दफाई ग्राम कोरिया कालरी थाना चिरमिरी पोस्ट कोरिया कालरी जिला कोरिया राज्य छत्तीसगढ़ है और प्रदर्श पी/17 की सेवा पुस्तिका में उसने आपात स्थिति में सम्पर्क हेतु रिश्तेदार का विवरण लिखा है जिसमें श्री शिवबालक संबंध मामा पता करंजी सरगुजा (छ.ग.) बताया है। प्रथम पक्षकार ने न्यायालयीन कथन में बताया है कि उसे प्रदर्श पी/17 के पते पर कभी भी पत्र प्राप्त नहीं हुआ। प्रथम पक्षकार ने न्यायालयीन कथन में बताया है कि सेवा समाप्ति आदेश गलत है और यह भी बताया है कि जहाँ वह काम करता था वहाँ गैसों का रिसाव, होता था, कीचड़ रहता था, इस कारण उसकी तबियत खराब रहती थी और वह जानबुझकर कभी भी अनुपस्थित नहीं रहा। प्रथम पक्षकार ने बताया है कि उसका स्थायी पता 64 दफाई कोरिया कालरी पोस्ट कोरिया कालरी जिला कोरिया (छ.ग.) है।

प्रतिपरीक्षण में प्रथम पक्षकार ने इस बात से इंकार किया है कि आक्सीजन की कमी और तबियत खराब होने की बात झूठ बताया है। प्रतिपरीक्षण में पुनः प्रथम पक्ष ने बताया है कि दिनांक 30.07.2010 को ड्यूटी पर जाकर, वापस आते समय मेरी तबियत खराब हुई थी।

प्रथम पक्षकार ने प्रतिपरीक्षण में बताया है कि करंजी में अपने मामा के साथ डॉक्टर द्वारा दिखाया था तो डॉक्टर ने बोला था कि ज्यादा तबियत खराब है इस कारण आप बाहर बड़े अस्पताल में दिखाईयें। प्रतिपरीक्षण में पुनः प्रथम पक्षकार ने बताया है कि करंजी में उसे अचानक चक्कर आया था, पेट में दर्द था और श्वास लेने में तकलीफ थी। प्रथम पक्षकार ने प्रतिपरीक्षण में यह भी बताया है कि यह कहना गलत है कि उसे गंभीर बीमारी नहीं हुई थी। प्रथम पक्षकार ने प्रतिपरीक्षण में वर्ष 2009 में 99 दिन में उपस्थिति और वर्ष 2010 में 70 दिन उपस्थिति और वर्ष 2011 में पूरे वर्ष भर उपस्थिति निरंक थी की बात से इंकार किया है। प्रतिपरीक्षण में पुनः प्रथम पक्षकार ने बताया है कि उसने न्यायालय में अपनी उपस्थिति को सत्यापित किया है और वह तबियत खराब होने के कारण ड्यूटी पर नहीं गया था जिसका मेडिकल प्रमाण पत्र संलग्न है। प्रतिपरीक्षण में प्रथम पक्ष ने बताया है कि — स्वतः कहा मैं अनाधिकृत अनुपस्थित नहीं था मैं बीमार था और सीक लीव लिया था। प्रथम पक्ष ने प्रतिपरीक्षण में बताया है कि उसने 31 जुलाई 2010 से 19.06.2012 तक बीमारी की जानकारी न्यायालय में पेश किया है।

प्रथम पक्षकार के न्यायालयीन कथन को प्रथम पक्षकार के साक्षी ईश्वर सिंह चंदेल ने समर्थन करते हुए आदेश 18 नियम 4 सी.पी.सी. के शपथ पत्र में बताया है कि दिनांक 30.07.2010 को ग्राम करंजी के पास बबलू सिंह को शिवबालक मोटर मैकेनिक ग्राम करंजी के पास ले गया था। साक्षी ने बताया है कि उसने देखा कि बबलू सिंह को पेट दर्द, जी मचलाना, घबराहट हो रहा था तब वहाँ पर लोकल डॉक्टर को बुलाकर प्राथमिक ईलाज भी कराया था। आठो व टैक्सी उपलब्ध नहीं था इस कारण बबलू सिंह के बार बार प्रार्थना करने पर साक्षी ईश्वर सिंह चंदेल उसे अपने साथ लेकर बिलासपुर में छोड़ दिया था। इस तरह साक्षी ने दिनांक 30.07.2010 को अचानक रास्ते में प्रथम पक्षकार के बीमार होने के संबंध में अपना कथन न्यायालय में दिया है। न्यायालयीन कथन में साक्षी ने ए-से-ए भाग पर अपना हस्ताक्षर होना बताया है और यह भी बताया है कि बबलू की स्वास्थ्यगत हालत बहुत ज्यादा खराब थी यदि मैं उन्हें अपनी गाड़ी में बिठाकर चिकित्सकीय मदद तक नहीं पहुंचाता तो बबलू सिंह की शारीरिक स्थिति बहुत ज्यादा बिगड़ जाती और उनके जीवन को खतरा हो सकता था।

प्रतिपरीक्षण में प्रथम पक्षकार के साक्षी ईश्वर सिंह चंदेल ने बताया है कि प्रथम पक्षकार बबलू सिंह से घटना के पहले उसका कोई परिचय नहीं था। साक्षी ने बताया है कि वह भटगांव से बिलासपुर की ओर आ रहा था तब रास्ते में उसे बबलू सिंह मिला था और जो बीमार था और उसकी हालत बहुत खराब थी। साक्षी ने यह भी बताया है कि उसका बबलू सिंह से कोई नजदीकी रिश्ता नहीं है वह केवल इंसानियत के नाते मदद किया था। साक्षी ने प्रतिपरीक्षण में बताया है कि यह कहना गलत है कि बबलू सिंह गंभीर रूप से बीमार नहीं था। गवाह ने स्वतः कहा कि उस समय उसे श्वास लेने में तकलीफ हो रही थी और साक्षी को बिलासपुर आना जरूरी था, इसलिए उसे बिलासपुर लाया था।

प्रथम पक्ष और उसके साक्षी के न्यायालयीन कथन और प्रतिपरीक्षण के विश्लेषण के उपरान्त यह निष्कर्ष प्राप्त होता है कि प्रथम पक्षकार/कर्मचारी का, दिनांक 30.07.2010 को ड्यूटी से आते समय अचानक गंभीर रूप से बीमार होने पर साक्षी के द्वारा मदद की गई है और अस्पताल पहुंचाया गया है, यह तथ्य प्रमाणित होता है।

प्रथम पक्षकार की ओर से शिवबालक ने भी शपथ पत्र पेश किया है जिसमें साक्षी ने बताया है कि बबलू सिंह और उसके परिवार को वह जानता है। बबलू सिंह को भटगांव क्षेत्र में कम्पनी का क्वार्टर नहीं मिला है। करंजी में उसके मकान पर रहता था। साक्षी ने दिनांक 30.07.2010 की घटना को समर्थित किया है।

द्वितीय पक्षकार/नियोक्ता की ओर से वरिष्ठ कार्मिक प्रबंधक श्री संजय कुमार दास ने अपना न्यायालयीन कथन दर्ज कराया है और स्टेटमेंट ऑफ क्लेम को ही अपना न्यायालयीन कथन मानकर पढ़े जाने का न्यायालयीन कथन में निवेदन किया है। प्रकरण के निराकरण के लिए द्वितीय पक्ष के साक्षी वरिष्ठ कार्मिक प्रबंधक के न्यायालयीन कथन और प्रतिपरीक्षण का विश्लेषण किया जाना महत्वपूर्ण है। पैराग्राफ 06 में द्वितीय पक्ष साक्षी ने स्वीकार किया है कि पी/8 और प्रदर्श पी/8-ए का दस्तावेज उनके कार्यालय को मिला था। साक्षी ने स्वीकार किया है कि यह बात सही है कि जिस दिन प्रदर्श पी/8 का दस्तावेज दिया गया उस दिन प्रथम पक्षकार बबलू सिंह को सेवा से नहीं निकाला गया था। साक्षी ने पैराग्राफ 09 में स्वीकार किया है और बताया है कि यह कहना सही है कि प्रदर्श पी/8 का आवेदन और उसके साथ संलग्न प्रदर्श पी/8-ए का चिकित्सा प्रमाण पत्र प्राप्त होने के बाद प्रथम पक्ष को प्रबंधन की ओर से लिखित में ऐसा सूचित नहीं किया गया कि बाहरी चिकित्सक का प्रमाण पत्र और उसके साथ केवल आवेदन लगभग दो वर्ष की अनुपस्थिति के बाद देने पर मान्य नहीं होता है।

यहाँ पर न्यायालय द्वारा प्रदर्श पी/8 के दस्तावेज का पुनः अवलोकन किया गया। प्रथम पक्षकार ने भी अपने न्यायालयीन कथन में प्रदर्श पी/8 और प्रदर्श पी/8-ए के मेडिकल सर्टिफिकेट को खान प्रबंधक भटगांव को देना न्यायालयीन कथन में बताया है और द्वितीय पक्ष के साक्षी ने प्रदर्श पी/8 और प्रदर्श पी/8-ए का दस्तावेज प्रथम पक्ष की सेवा समाप्ति के पहले ही दिया था, स्वीकार किया है।

प्रदर्श पी/8 प्रकरण में प्रस्तुत है जो बबलू सिंह जनरल मजदूर द्वारा खान प्रबंधक 1/2 खदान भटगांव एरिया एस.ई.सी.एल. को हाथ से लिखा गया फीटनेस प्रमाण पत्र जो ओरिजनल दस्तावेज है। कार्य पर उपस्थिति की सूचना और कार्य पर जाने हेतु अनुमति प्रदान करने के संबंध में प्रार्थी बबलू सिंह ने निवेदन किया है, आवेदन के साथ डॉक्टर द्वारा दिये गये फीटनेस प्रमाण पत्र संलग्न है जो बीमारी के बाद वह ड्यूटी पर जाने के लिए फीट हो गया है, इस कारण उसे काम करने की अनुमति दी जावे।

प्रदर्श पी/8-ए मेडिकल सर्टिफिकेट है जो मेडिकल आफिसर, गवर्नमेंट जिला हास्पिटल बिलासपुर द्वारा जारी किया गया है जिसमें बबलू सिंह को दिनांक 31.07.2010 से 19.06.2012 तक बीमार होना बताया गया है।

उपरोक्तानुसार दस्तावेज, प्रथम पक्षकार/कर्मचारी और द्वितीय पक्षकार/नियोक्ता साक्षी के कथनों के विश्लेषण के उपरान्त यह निष्कर्ष प्राप्त होता है कि दिनांक 27.06.2012 को दिनांक 19.06.2012 का मेडिकल प्रमाण पत्र सहित आवेदन पत्र लेकर दिनांक 31.07.2010 से दिनांक 19.06.2012 तक बीमार होने का प्रमाण पत्र दिया गया था, का तथ्य प्रमाणित है।

द्वितीय पक्ष साक्षी ने प्रतिपरीक्षण में बताया है कि प्रदर्श पी/17 बबलू सिंह की सेवा पुस्तिका का मुख्य पृष्ठ है और उसके कालम क्रमांक (क) में बबलू सिंह का स्थायी पता दिया हुआ है। कालम (क) में बबलू सिंह का स्थायी पता— ग्राम बरियारपुर थाना शिवांग, पोस्ट पंचरुखी, जिला शिवान राज्य बिहार का पता दिया हुआ है और कालम (घ) में वर्तमान पता— ग्राम कोरिया कालरी, मोहल्ला 64 दफाई, थाना चिरमिरी, पोस्ट कोरिया कालरी जिला कोरिया (छ.ग.) दर्ज है। द्वितीय पक्ष साक्षी ने यह भी स्वीकार किया है कि यह कहना सही है कि प्रदर्श पी/17 के पृष्ठ -2 पर आपात स्थिति में नजदीकी रिश्तेदार से सम्पर्क का कालम है जिसमें शिवबालक, सम्बन्ध-मामा, पता करंजी, सरगुजा (छ.ग.) का पता दिया हुआ है।

द्वितीय पक्ष साक्षी के इस न्यायालयीन कथन का समर्थन, प्रथम पक्षकार/कर्मचारी के न्यायालयीन कथन से होता है। उसने सेवा पुस्तिका में अपना स्थायी पता, अस्थायी पता और आपात स्थिति का पता प्रबंधन पक्ष को लिखित में दे दिया था। द्वितीय पक्ष साक्षी के प्रतिपरीक्षण का विश्लेषण करना महत्वपूर्ण है क्योंकि द्वितीय पक्ष साक्षी ने स्वीकार किया है कि प्रकरण में प्रस्तुत प्रदर्श पी/14 का आरोप पत्र बबलू सिंह को जो विभाग द्वारा भेजा गया था उसमें स्थायी पता ग्राम चिरमिरी, पोस्ट चिरमिरी, जिला कोरिया (छ.ग.) दर्ज है। द्वितीय पक्ष साक्षी ने यह भी स्वीकार किया है कि यह कहना सही है कि सभी चारों आरोप पत्र और दस्तावेज विभाग द्वारा भेजा गया है, उसमें चिरमिरी का ही पता लिखा हुआ है। द्वितीय पक्ष साक्षी ने यह भी स्वीकार किया है कि यह कहना सही है कि प्रदर्श पी/14 में महाप्रबंधक भटगांवक्षेत्र ने बबलू को जो द्वितीय कारण बताओं नोटिस जारी किया है, उसमें बबलू सिंह का पता बबलू सिंह आ0 हरिशंकर सिंह जनरल मजदूर केटेगरी-1 भटगांव कालरी भटगांव उपक्षेत्र दिया हुआ है।

साक्षी के उपरोक्तानुसार न्यायालयीन कथन का विश्लेषण करने से यह स्पष्ट निष्कर्ष प्राप्त होता है कि द्वितीय पक्ष/नियोक्ता द्वारा प्रथम पक्षकार/कर्मचारी के संबंध में जारी किये गये आरोप पत्र और की गई जांच कार्यवाही तथा दिये गये कारण बताओं नोटिस, प्रथम पक्षकार द्वारा विभाग में सेवा पुस्तिका में लिखे गये स्थायी पता और अस्थायी पता तथा आपातकालीन पता पर नहीं भेजा गया। यह स्पष्ट रूप से प्रमाणित होता है कि प्रथम पक्षकार को बचाव का पूरा अवसर नैसर्गिक न्याय सिद्धान्त के अनुसार नहीं दिया गया है और उसे विभागीय जांच, द्वितीय कारण बताओं नोटिस, सेवा समाप्त करने से पहले कोई जानकारी सही और यथोचित पते पर नहीं दी गई।

प्रबंधन पक्ष द्वारा आरोप पत्र को न्यायालय के समक्ष प्रमाणित करने के लिए कोई दस्तावेज न्यायालय में पेश नहीं किया गया है। प्रकरण में संबंधित स्थल की उपस्थिति पंजी मूलतः न्यायालय में पेश नहीं की गई है जिससे यह वास्तव में प्रमाणित हो कि प्रथम पक्षकार/कर्मचारी अनाधिकृत रूप से लगातार अनुपस्थित था। प्रथम पक्षकार के द्वारा चिकित्सा प्रमाण पत्र के साथ दिये गये आवेदन पत्र पर समय पर विचार नहीं किया गया और इस पर प्रबंधन पक्ष द्वारा विचार नहीं करने का कारण बताते हुए ऐसी कोई भी दस्तावेज पेश नहीं किया गया है जिससे यह माना जावे कि जिला चिकित्सालय के चिकित्सक द्वारा प्रथम पक्ष को दिया गया चिकित्सा प्रमाण पत्र अवैध है। प्रबंधन पक्ष ने सेवा पुस्तिका में प्रथम पक्ष के द्वारा बताये गये तीनों पते पर पत्राचार नहीं किया है यह प्रमाणित हुआ है। प्रथम पक्ष को उसके द्वारा दिये गये पते पर कोई भी सूचना प्रेषित नहीं की गई है, इस कारण दिया गया आरोप पत्र और की गई विभागीय जांच की कार्यवाही अवैध है। स्थायी कर्मचारी को सेवा समाप्ति के पूर्व कठोर दण्डादेश देने के लिए सुनवाई का उचित अवसर भी नहीं दिया गया है। प्रथम पक्षकार के पूर्व अपराधों के संबंध में कोई मूल प्रमाण पत्र या दस्तावेज प्रबंधन पक्ष द्वारा न्यायालय में पेश नहीं किया गया है।

विभागीय जांच और उससे संबंधित की गई कार्यवाही द्वितीय पक्षकार के वरिष्ठ प्रबंधक के न्यायालय में उपस्थित हो जाने के बाद भी न्यायालय में पेश नहीं की गई है जबकि यह निष्कर्ष प्राप्त हो गया है कि दिया गया आरोप पत्र और जांच अवैध है तब श्रम विधान के प्रावधान के अनुसार नियोक्ता को न्यायालय के समक्ष यह प्रमाणित करना चाहिए था कि प्रथम पक्षकार अनाधिकृत रूप से लगातार अनुपस्थित रहने के दुराचरण के दोषी है किन्तु ऐसा कोई प्रमाण या साक्ष्य न्यायालय में पेश नहीं की गई है। यहाँ तक कि प्रबंधन ने न्यायालय में विभागीय कार्यवाही का कोई भी दस्तावेज पेश नहीं किया।

उपरोक्तानुसार विश्लेषण के आधार पर यह निष्कर्ष प्राप्त होता है कि स्थायी और नियमित कर्मचारी को बिना बचाव का अवसर दिये, अवैधानिक तरीके से सेवा से पृथक किया गया है। प्रथम पक्षकार/कर्मचारी को पूर्व में दिये गये दण्डादेश को न्यायालय में प्रमाणित नहीं किया गया है। प्रथम पक्षकार/कर्मचारी ने दिनांक 31.07.2010 से 29.06.2012 तक का जिला चिकित्सालय के द्वारा जारी बीमार होने का प्रमाण पत्र न्यायालय के समक्ष प्रमाणित कराया है। अतः यह प्रमाणित होता है कि दिनांक 31.07.2010 से 19.06.2012 तक की अवधि में प्रथम पक्षकार/कर्मचारी बीमार होने के कारण कार्य पर उपस्थित नहीं हो सका था, इस कारण बिना अवकाश लिये अनाधिकृत अनुपस्थिति का आरोप प्रमाणित नहीं होता है।

उपरोक्त विश्लेषण के आधार पर यह निष्कर्ष प्राप्त होता है कि प्रथम पक्षकार की सेवा समाप्ति अनुचित और अवैध है।

वाद प्रश्न क्रमांक 02 के निष्कर्ष के आधारः—प्रथम पक्षकार/कर्मचारी ने न्यायालय में प्रस्तुत शपथ पत्र और न्यायालयीन कथन से द्वितीय पक्षकार द्वारा जारी किये गये आदेश को अवैध घोषित करने का निवेदन किया है और 12 लाख रुपये की क्षतिपूर्ति वेतन और सेवा के निरंतरता के साथ सहायता प्रदान करने का निवेदन किया है। किन्तु प्रथम पक्षकार/कर्मचारी ने अपने शपथ पत्र और न्यायालयीन कथन में यह कहीं भी नहीं बताया है कि सेवा समाप्ति के बाद से वह लगातार बेरोजगार है। प्रथम पक्षकार ने लगातार बेरोजगार होने के संबंध में कोई युक्तियुक्त प्रमाण और साक्ष्य भी न्यायालय के समक्ष पेश नहीं किया है। यह निष्कर्ष प्राप्त हो गया है कि जिस अवधि में प्रथम पक्षकार/कर्मचारी पर अनाधिकृत रूप से अनुपस्थित रहने का आरोप लगाया है उस अवधि में प्रथम पक्षकार बीमार था और प्रथम पक्षकार ने जिला चिकित्सालय बिलासपुर के चिकित्सक द्वारा प्रमाणित प्रमाण पत्र सक्षम अधिकारी के समक्ष द्वितीय पक्ष के कार्यालय में पेश कर दिया था, इस कारण द्वितीय पक्षकार द्वारा सेवा समाप्ति के लिए दिया गया दण्डादेश को अवैध घोषित करते हुए प्रथम पक्षकार को इस प्रकरण की परिस्थिति के आधार पर 20 प्रतिशत पिछले बकाया वेतन प्राप्त करने का अधिकारी घोषित किया जाना न्यायोचित प्रतीत होता है।

उल्लेखनीय है कि श्रम न्यायालय बिलासपुर छत्तीसगढ़, माननीय उच्च न्यायालय बिलासपुर छत्तीसगढ़ का अधिनस्थ न्यायालय है और अधिनस्थ न्यायालय की, काम-काज की भाषा हिन्दी है, इस कारण अधिनिर्णय हिन्दी में लिखाया गया है।

निर्धारित वाद प्रश्नों के आगे निष्कर्ष में केन्द्रीय शासन की ओर से प्रेषित अनुसूची के प्रश्नों का उत्तर देते हुए निम्नानुसार अधिनिर्णय पारित किया जाता है :-

अधिनिर्णय

- (1) द्वितीय पक्षकार/नियोक्ता, जनरल मैनेजर, भटगांव एरिया एस.ई.सी.एल. को, आदेश दिया जाता है कि प्रथम पक्षकार/कर्मचारी बबलू सिंह जनरल मजदूर कैटेगरी-1 को, 20 प्रतिशत पिछले बताया वेतन सहित पूर्व पद की निरन्तरता के साथ सेवा में पुनः पदस्थापित करें।
- (2) अधिनिर्णय का अनुपालन, उद्घोषणा दिनांक से एक माह के भीतर किया जावें।

अधिनिर्णय आज दिनांक 09.09.2016 को पारित किया गया।

अरुण कुमार चौकसे, लेबर जज

नई दिल्ली, 9 दिसम्बर, 2016

का.आ. 2415.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (संदर्भ सं. 707/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.12.2016 को प्राप्त हुआ था।

[सं. एल 12011/3/2000—आईआर(बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 9th December, 2016

S.O. 2415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 707/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, AHMEDABAD (GUJARAT) as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 09/12/2016

[No. L-12011/3/2000 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present....

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 20th June, 2016

Reference: (CGITA) No-707/2004

The Chief Regional Manager,
Bank of India, Vadodara Region,
Bank of India Building, Ellora Prk, Subhanpura
Vadodara (Gujarat) – 390007.

.....First Party

v/s

The Deputy General Secretary,
Bank of India Employees Union,
Bank of India Building, Raopura,
P.B. No. 132, Baroda (Gujarat).

.....Second Party

For the First Party : Shri D.C. Gandhi, Advocate

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/3/2000-IR(B-II) dated 21.06.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bank of India in interpreting the provisions of Para 11(ii) of All India Settlement dated 25.01.1991 by posting Shri N.P. Bhatia outside Baroda City on the plea that a sub-staff on his promotion, can be posted either in the city branches or district branches as per exigencies of service (even after having the vacancies in Baroda city) is just, legal and proper? If not, What relief the concerned workman is entitled to?”

1. The reference dates back to 21.06.2000. Both the parties submitted the Vakalatatpatra Ext. 4 and Ext. 3 of their respective advocates on 17.04.2001 and 19.01.2001. Second party submitted the statement of claim Ext. 5 on 13.09.2002. First party, Bank of India also filed the written statement Ext. 6 on 07.03.2003. But second party, since then, did not prefer to give his evidence. Thus it appears that second party is not willing to prosecute/proceed with the reference.
2. Thus, in the light of the above, the reference is dismissed in non-prosecution of the reference by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 9 दिसम्बर, 2016

का.आ. 2416.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एल0 आई0 सी0 के प्रबंधन के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (संदर्भ सं. 1252/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.12.2016 को प्राप्त हुआ था।

[सं. एल-17012/29/1995-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 9th December, 2016

S.O. 2416.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1252/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Life Insurance Corporation of India and their workmen, received by the Central Government on 09.12.2016

[No. L-17012/29/1995-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 21st June, 2016

Reference: (CGITA) No. 1252/2004

The Senior Divisional Manager,
Life Insurance Corporation of India,
Surat Division Office, “Jeevan Prakash”,
Muglisara, P.B. No. 239,
Surat – 395003

...First Party

V/s.

Shri Dharmendra Vasavada,
“Nij-Dham”, 24, Ramnagar,

Near Eru Char Rasta, Navsari – 396450

...Second Party

For the First Party : None

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-17012/29/95-IR(B-II) dated 04.03.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Life Insurance Corporation of India, Surat Division in terminating the services of Shri Dharmendra G. Vasavada w.e.f. 13.03.1992 is legal and justified? If not, to what relief the said workman is entitled?”

1. The reference dates back to 04.03.1997. The second party submitted the statement of claim Ext. 4 on 07.04.1997 and the first party submitted the written statement Ext. 12 on 15.11.1997. Since then the second party did not prefer to lead his evidence. Thus, it appears that the second party is not willing to prosecute the case.
2. Therefore, the case is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2016

का.आ. 2417.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय आसनसोल के पंचाट (संदर्भ संख्या 151/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.12.2016 को प्राप्त हुआ था।

[सं. एल. 22012/123/1999—आई आर (सीएम-II)]

राजेन्द्र सिंह , अनुभाग अधिकारी

New Delhi, the 13th December, 2016

S.O. 2417.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 151/1999) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. ECL, and their workmen, received by the Central Government on 13.12.2016

[No. L-22012/123/1999 - IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL****PRESENT :** Sri Pramod Kumar Mishra, Presiding Officer**REFERENCE No. 151 OF 1999****PARTIES :**

The management of Ghanshyam Colliery of M/s. ECL

Vs.

Sh. Naresh Bhuia

REPRESENTATIVES:

For the management : Sri P. K. Goswami, Learned Advocate

For the union (Workman) : Sri M. Mukherjee, Learned Advocate

Industry : Coal

State : West Bengal

Dated: 24.11.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **No. L-22012/123/99-IR(CM-II)** dated 31.08.1999/08.09.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Ghanshyam Colliery of M/s. ECL in dismissing Sh. Naresh Bhuia, Underground Loader from services, is legal and justified? If not, to what relief is the workman entitled?”

Having received the Order **No. L-22012/123/99-IR(CM-II)** dated 31.08.1999/ 08.09.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **151 of 1999** was registered on 23.09.1999/08.10.2001 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

2. Case called out. Sri P. K. Goswami, learned advocate appears on behalf of the management. None appears on behalf of the union/workman.

3. On perusal of the case record it is found that the union/workman last appeared before the Tribunal on 10.06.2009 through advocate Sri Manoj Mukherjee and thereafter never appeared before the Tribunal. Registered notice was issued to the union on 09.08.2016 but the union/workman did not respond.

4. It seems that the workman/union is now not at all interested to proceed with the case further. So I have no option left but to close the case. As such this old case is closed and accordingly a ‘**No Dispute Award**’ is hereby passed.

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 13 दिसम्बर, 2016

का.आ. 2418.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय आसनसोल के पंचाट (संदर्भ संख्या 30/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.12.2016 को प्राप्त हुआ था।

[सं. एल.-22012/75/2012-आई आर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 13th December, 2016

S.O. 2418.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of M/s. ECL, and their workmen, received by the Central Government on 13.12.2016.

[No. L-22012/75/2012- IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**IN THE COURT OF CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURTASANSOL**

Ref.: Ministry’s Order **No. L-22012/75/2012-IR (CM-II)** dated 20.07.2012

This office **Reference No. 30 of 2012 dated 13.08.2012**

Management of Parascole Colliery, Kajora Area of M/s. ECL

v/s

Sri Sukta Goura

SETTLEMENT IN LOK ADALAT

Held on 24th November, 2016 at CGIT-cum-LC, Asansol.

AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The **Form 'H'** containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2016

का.आ. 2419.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल.आई.सी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (सन्दर्भ सं. 685/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.12.2016 को प्राप्त हुआ था।

[सं. एल-12012/16/1999—आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th December, 2016

S.O. 2419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 685/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of LIC of India and their workmen, received by the Central Government on 07.12.2016

[No. L-17012/16/1999 - IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 30th June, 2016

Reference: (CGITA) No. 685/2004

The Divisional Manager,
LIC of India, Vadodara Division, 7th Floor,
Suraj Plaza – II, Sayajigunj,
Vadodara (Gujarat) – 390005

...First Party

V/s

The General Secretary,
Vadodara Divisional Insurance Employees Union,
Vadodara, 19, SoordhamAtahar Society, Near Nalanda,
Vadodara (Gujarat) – 390019

...Second Party

For the First Party : Shri D.C. Gandhi Associates

For the Second Party : Shri Sudhir Shah

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-17012/16/99-IR (B-II) dated 25.10.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management in withdrawing the functional allowance of Rs. 36.00 per month from Mr. P.D. Gohil, Record Clerk w.e.f. January, 1999 is legal, proper and justified? If not, what relief is the workman entitled to?”

1. The reference dates back to 25.10.1999. Second party submitted the statement of claim Ext. 5 on 25.07.2000. First party submitted the written statement Ext. 9 on 31.07.2001. Since then, the second party has not been leading evidence and has also been absent since last dozens of dates. Thus, it appears that the second party has not been intending to prosecute the case. Therefore, the case is fit to be dismissed in default of the second party.
2. Thus, the reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2016

का.आ. 2420.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अहमदाबाद के पंचाट (संदर्भ सं. 1226/2004) प्रकाशित करती है जो केन्द्रीय सरकार को 07.12.2016 को प्राप्त हुआ था।

[सं. एल-12011/236/2002-आई आर (बी- II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th December, 2016

S.O. 2420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1226/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 07.12.2016.

[No. L-12011/236/2002-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 28th June, 2016

Reference: (CGITA) No. 1226/2004

The Dy. General Manager,
Union Bank of India,
High Court Way, Premchand House, Ashram Road,
Ahmedabad (Gujarat) – 380009

...First Party

V/s

The Assistant Secretary,
Gujarat Bank Workers Union,
Rambar, 8, Jagnath Plot, Post Box No. 10,
Rajkot – 360001

...Second Party

For the First Party : Shri B.K. Oza

For the Second Party : Shri Yogen Pandya

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/236/2002-IR (B-II) dated 16.04.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Union Bank of India in dismissal from service of Shri D.D. Bhatt, Head Cashier is legal and justified? If not, what relief the concerned workman is entitled to?”

1. The reference dates back to 16.04.2003. Second party submitted the vakalatpatra Ext. 4 and statement of claim Ext. 5 on 04.11.2004. First party filed the vakalatpatra Ext. 6 of his advocate Shri B.K. Oza on 09.07.2008 but since then, he did not file the written statement on behalf of the first party. Therefore, on 22.02.2016 the reference was ordered to be proceeded ex parte against the first party. But second party has been absent since 27.03.2006 and also absent on 22.02.2016 when the order of ex parte hearing was passed and also absent today itself for leading evidence. Thus, this tribunal has no option but to dismiss the reference in non-prosecution by the second party.

2. Thus, the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2016

का.आ. 2421.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल. आई. सी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 730/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.12.2016 को प्राप्त हुआ था।

[सं. एल.-17012/7/2001-आई आर (बी- II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th December, 2016

S.O. 2421.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 730/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of LIC of India and their workmen, received by the Central Government on 07.12.2016.

[No. L-17012/7/2001-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 29th June, 2016

Reference: (CGITA) No- 730/2004

The Divisional Manager,
LIC of India, Vadodara Division,
7th Floor, Suraj Plaza – II, Sayajigunj,
Vadodara (Gujarat) – 390005

...First Party

V/s

Shri H.S. Solanki,
R/o Harijan Vas, At. Post Singhrot
Vadodara (Gujarat) – 390001

...Second Party

For the First Party : Shri D.C. Gandhi Associates

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-17012/7/2001-IR (B-II) dated 26.04.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of LIC of India, Baroda Division through the Sr. Divisional Manager, Baroda and its officers in terminating the services of Shri Hirabhai Shivabhai Solanki w.e.f. 13.07.1999 vide punishment order dated 13.07.1999 is legal, proper and justified? If not, what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?”

3. The reference dates back to 26.04.2001. The second party submitted the statement of claim Ext. 7 on 18.02.2002 and first party submitted the vakalatpatra Ext. 5 of his advocate on 10.12.2001 and written statement Ext. 10 on 29.07.2002. The second party submitted the 60 documents vide application Ext. 60 same were appear to have not been opposed by the first party but from the date of filing the documents 05.04.2002 second party has failed to lead evidence. Thus, it appears that second party is not intended to lead evidence.
4. Therefore, this tribunal has no option but to dismiss the reference in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2016

का.आ. 2422.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैन्ट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 10/2010) प्रकाशित करती है जो केन्द्रीय सरकार को 07.12.2016 को प्राप्त हुआ था।

[सं. एल-12012/103/2009-आई आर (बी- II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th December, 2016

S.O. 2422.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2010) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, ASANSOL as shown in the Annexure, in the industrial dispute between the management of Central Bank of India, and their workmen, received by the Central Government on 07.12.2016.

[No. L-12012/103/2009-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT: Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE No. 10 OF 2010

PARTIES:

The management of Central Bank of India, Chhota Alunda Branch

Vs.

Mrs. Azizunnesa

REPRESENTATIVES:

For the management : Sri J. N. Sinha, Ld. Advocate

For the union (Workman) : Sri Sayantan Mukherjee, Ld. Advocate

Industry : Banking

State : West Bengal

Dated: 06.10.2016

A W A R D

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **No. L-12012/103/2009-IR(B-II)** dated 04/02/2010 has been pleased to refer the following dispute for adjudication by this Tribunal.

THE SCHEDULE

“Whether the action of the management of Central Bank of India, Chhota Alunda Branch in terminating Mrs. Azizunnesa, workman from service w.e.f. 14/08/2008 is legal and justified? To What relief the workman is entitled?”

Having received the Order **No. L-12012/103/2009-IR(B-II)** dated 04/02/2010 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **10 of 2010** was registered on 17/02/2010 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Case called out. Both parties are absent.

On perusal of the case record it is found that the case was fixed for filing rejoinder by the workman on 23.04.2012 i.e. more than four years ago. Thereafter 30 dates have been granted but to no effect. Registered notices were also issued on 27.02.2015 and 31.08.2015 but all are in vain. It seems that the workman has no interest left to proceed with the case further. As such the case is closed and a **‘No Dispute Award’** is hereby passed accordingly.

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2016

का.आ. 2423.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदबाद के पंचाट (सन्दर्भ सं. 684/2004) प्रकाशित करती है जो केन्द्रीय सरकार को 07.12.2016 को प्राप्त हुआ था।

[सं. एल-12012/198/1999-आई आर (बी- II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th December, 2016

S.O. 2423.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 684/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 07.12.2016.

[No. L-12012/198/1999-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present....**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 29th September, 2016

Reference: (CGITA) No. 684/2004

The Regional Manager,
Punjab National Bank,
Popular House (Basement),
Ashram Road,
Ahmedabad (Gujarat)

.....First Party

V/s

The President,
The Association of the Punjab National Bank Employees,
29, Panchvati, Ajwa Road,
Baroda (Gujarat) - 390019

.....Second Party

For the First Party : Shri Vinod M. Parikh, Shri Sudhir J. Shah

For the Second Party : The President of the Association of the Punjab
National Bank Employees,

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/198/99-IR(B-II) dated 17.11.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the workman Shri Jitendra Rajput has put in ‘continuous service’ in the Branches of Punjab National Bank at Ankleshwar and Bharuch as per provisions of Section 25-B of I.D. Act, 1947?”

“Whether the action of the management of Punjab National Bank through its Officers in terminating/discontinuing his service of the workman Sh. Jitendra Rajput w.e.f. 14.12.1998 is proper, legal and justified? If not, to what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?”

AND

“Whether the demand of the union to regularise the services of Sh. Jitendra Rajput w.e.f. 21.03.1995 on permanent basis in the bank and to make the payment of wages w.e.f. 21.03.1995 at par with regular employees in accordance with bank’s bipartite settlements is legal, proper and justified? If so, what relief the concerned workman is entitled to and from which date?”

1. The reference dates back to 17.11.1999. The second party submitted the statement of claim Ext. 3 on 08.02.2000 and first party submitted the written statement Ext. 7 on 24.04.2000. Thereafter on 08.01.2002, the second party moved an application Ext. 12 for production of documents by the opposite party; same was disposed of on 31.03.2003. Since then the second party has not been leading evidence and has also been absent. On 11.02.2011, a notice was issued to both the parties to appear on 18.03.2011 informing him that the first party has moved an application Ext. 22 for amending the written statement. Consequently the second party filed the reply Ext. 29 on 06.09.2011. But since 18.10.2011, the second party has been absent and has not been leading evidence. Thus it appears that the second party is not willing to prosecute the case.
2. Therefore, the tribunal has no option but to dispose of the reference in the absence of the evidence of the parties with a finding that all the actions taken against the second party workman were legal, proper and justified and second party workman is not entitled for any relief.
3. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2016

का.आ. 2424.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 644/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.12.2016 को प्राप्त हुआ था।

[सं. एल-12011/27/1995-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th December, 2016

S.O. 2424.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 644/2004) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 07.12.2016.

[No. L-12011/27/1995-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present....**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 28th September, 2016

Reference: (CGITA) No. 644/2004

The Deputy General Manager (O & S),
Bank of Baroda, Suraj Plaza – I, Sayajiganj,
Baroda – 390005
V/s

.....First Party

The Assistant Secretary,
Gujarat Bank Workers' Union,
"Usha Kiran", Raopura,
Baroda – 390001

.....Second Party

For the First Party : Shri M.K. Thakar

For the Second Party : Shri M.S. Mansuri

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/27/95-IR(B-II) dated 10.02.1995 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Bank of Baroda in not appointing the Advance Ledger Posting Machine Operators is legal and justified? If not, to what relief the said workmen are entitled?”

1. The reference dates back to 10.02.1995. After service on both the parties, the second party submitted the statement of claim Ext. 5 and first party submitted the written statement Ext. 7 on 29.07.1997 and 16.12.1997 respectively. Since then the second party has failed to lead his evidence.
2. The tribunal issued fresh notice to both the parties on 07.02.2011 to appear on 14.03.2011 but to no result. Again fresh notice was issued to both the parties on 15.04.2014 to appear at Ahmedabad on 11.06.2014 but to no result.

3. Thus it appears that both the parties are not willing to pursue the case with respect to the reference in question. Therefore, the tribunal has no option but to decide the reference in the absence of evidence of both the parties.
4. As the parties have not lead their evidence, therefore, the action of the management of Bank of Baroda in not appointing the Advance Ledger Posting Machine Operators is legal and justified.
5. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 7 दिसम्बर, 2016

का.आ. 2425.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैन्ट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय आसनसोल के पंचाट (संदर्भ सं. 09/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7.12.2016 को प्राप्त हुआ था।

[सं. एल-12012/101/2009-आई आर (बी- II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th December, 2016

S.O. 2425.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2010) of the Cent. Govt.Indus.Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Central Bank of India, Chhota Alunda Branch, P.O. Itagoria and their workmen, received by the Central Government on 07.12.2016.

[No. L-12011/101/2009-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT: Sri Pramod Kumar Mishra,
Presiding Officer

REFERENCE No. 09 OF 2010

PARTIES: The management of Central Bank of India, Chhota Alunda Branch

Vs.

Mr. Masudar Rahaman

REPRESENTATIVES:

For the management: Sri J. N. Sinha, Ld. Advocate

For the union (Workman): Sri Sayantan Mukherjee, Ld. Advocate

INDUSTRY: BANKING STATE: WEST BENGAL

Dated: 05.10.2016

AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **No. L-12012/101/2009-IR(B-II)** dated 04/02/2010 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Central Bank of India, Chhota Alunda Branch in terminating Mr. Masudar Rahaman, workman from service w.e.f. 30/04/2007 is legal and justified? To What relief the workman is entitled?”

Having received the Order **No. L-12012/101/2009-IR(B-II)** dated 04/02/2010 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **09 of 2010** was registered on 17/02/2010 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Case called out. Neither the workman nor the management is present.

On perusal of the case record it is found that the case was fixed for filing rejoinder by the workman on 23.04.2012 and thereafter 30 dates and more than four years have been granted but to no effect. Learned Advocate for the workman, Sri Sayantan Mukherjee occasionally appeared and prayed for time. He was given sufficient opportunities but the same has not been filed yet. It seems that the workman has no more interest left to proceed with the case further. As such the case is closed and a **‘No Dispute Award’** is hereby passed accordingly.

ORDER

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer